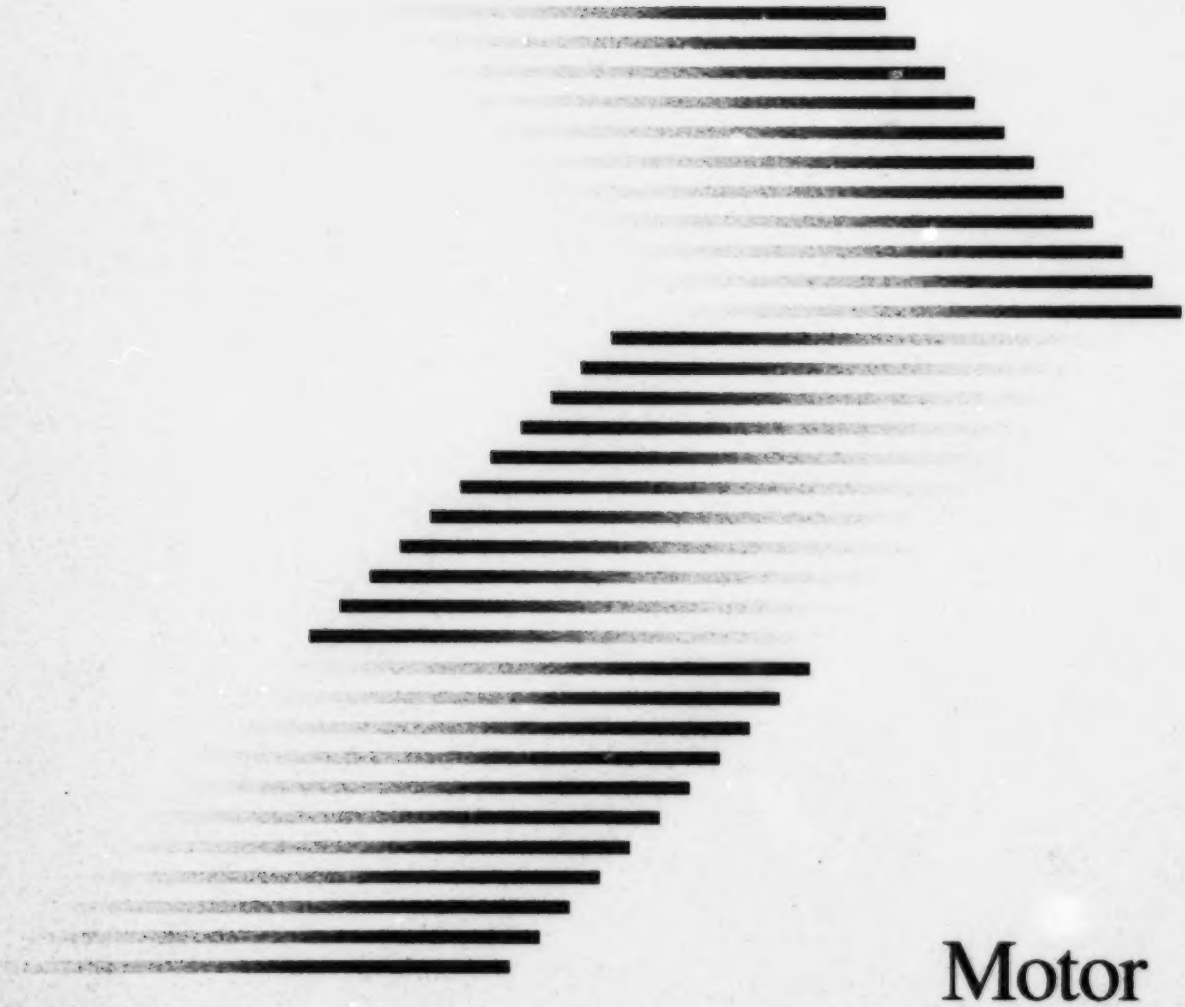
Province of
British Columbia



Motor Carrier Commission

ANNUAL REPORT 1990/91

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ANNUAL REPORT OF THE

Motor Carrier Commission

51st Annual Report
Covering the Licence Year Ended
February 28, 1991

Pursuant to Section 34
of the Motor Carrier Act

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Burnaby, British Columbia

To His Honour the Lieutenant Governor in Council
of the Province of British Columbia

MAY IT PLEASE YOUR HONOUR:

Sir: We respectfully transmit herewith the 51st Annual Report, pursuant to the provisions of Section 34 of the *Motor Carrier Act*, covering the licence year ended February 28, 1991.

MOTOR CARRIER COMMISSION:

William H. Preston, *Chairman*

Ian W. Craig, *Commissioner*

William M. Gartside, *Commissioner*

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CHAIRMAN'S REMARKS

The 1990/91 licence year (ended February 28, 1991) marked another year of notable changes in the industries regulated by the Motor Carrier Commission—namely, "for hire" operators of trucks, buses and taxicabs.

Since the Commission was established in 1973, much has happened in the environment in which the Commission works. New highways have been constructed throughout the province, the ferry service has been expanded, and traffic congestion has increased in most urban centres. At the same time, the issue of vehicle emission has become a major concern for operators of motor vehicles throughout British Columbia.

The role which has been entrusted to the Motor Carrier Commission is as challenging as it is important: to ensure that public service and safety are fairly and effectively provided.

In the for-hire transport sector, several important developments have further challenged the Commission in carrying out its mandate. These include the start of deregulation of extra-provincial trucking in 1987, the dramatic increase in the bus business, and the consolidation of small, family-operated taxicabs into a few companies, especially in the Lower Mainland and Greater Victoria.

The Commission has worked hard to respond to these changes, to ensure that both public service and safety are fairly and effectively provided.

One of our main tasks in this last licence year has been to ensure, through the regulatory process, that residents of British Columbia have reliable service by authorized freight carriers, buses and taxicabs. Just as importantly, we have strengthened our efforts to see that all operators adhere to the National Safety Code requirements in conducting their business. The tests of carrier fitness, public need and necessity remain major focal points of the Commission, and in 1990/91 we reviewed some 4,000 applications for service with these criteria in mind.

During the year, we also made available to motor carrier applicants and their representatives a variety of policy statements and guidelines concerning the *Motor Carrier Act* and its Regulations. This open process is designed to give instruction to industry and to help carriers understand the intent of the licensing requirements. Our aim is to assist operators in preparing applications that are reasonable and complete, so that the forms can be handled with as little difficulty and delay as possible. As well, we have focused on making our orders more specific and explanatory so that the rules are clear to all carriers. We plan to expand this initiative in our next licence year.

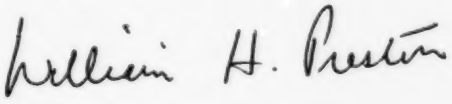
Throughout 1990/91, the Commission also met with representatives of regulated industry groups to participate in discussions on a number of sensitive issues. By providing neutral grounds for discussion, we were able to encourage a resolution in many of the issues, including the establishment of cross-licensing arrangements for charter buses at specified costs, and the authorization of increases in trucking rates to offset the higher fuel costs during the Persian Gulf War.

In coming years, the Commission intends to pursue a higher profile within the for-hire carrier industry, and to adopt a more assertive role in problem solving.

On the administrative side, there were several changes in personnel at the Commission in 1990/91. Mr. Gerry Morris retired in 1990 after serving with the Commission for 14 years, the last six and a half as Chairman. Mr. Morris's fairness in dealing with a wide variety of issues gained the respect of all who dealt with him.

Mr. William Gartside joined the Commission in November 1990, following a long career in the trucking industry.

Mr. John Kosowick, Secretary to the Commission, retired after 15 years' service. John's friendly attentiveness and widely recognized knowledge of legislation and procedures were an important contribution to the Commission. Mr. Barry Bergh took over the position on May 1, 1991.



William H. Preston
CHAIRMAN

MANDATE OF THE MOTOR CARRIER COMMISSION

"For-hire" motor carriers—that is, truck, bus and taxi companies that transport goods or passengers for payment across municipal or provincial boundaries—have been regulated in British Columbia for over 50 years. The Highways Department was originally in charge of regulating the carriers, until the Public Utilities Commission took over. Since 1973, however, that responsibility has fallen to the Motor Carrier Commission.

The Motor Carrier Commission is an independent body which operates within the Ministry of the Solicitor General and works closely with the Motor Vehicle Branch.

Why is regulation of the motor carrier trade required? There are primarily two reasons. The first is to promote safety on the public highways. The driving public and passengers benefit from the stringent safety standards required in the motor carrier industry. The second is to promote adequate, efficient service across British Columbia at reasonable cost, and to foster sound economic conditions in the transportation business in the province. The public, as well as the for-hire motor carriers of the province, benefit from a regulated market and the knowledge that all carriers must meet the same standards of safety and mechanical fitness.

Through regulation, the Commission strives to prevent the excesses associated with growing competition in the industry—rate cutting, longer working hours for drivers, lower maintenance levels for vehicles, and declining financial stability of the operators. The Commission does this by controlling the number and type of operators licensed, monitoring operators and vehicles through vehicle inspections and licence reviews, and enforcing compliance through fines and suspensions.

What is the Motor Carrier Commission, and what powers does it have?

The Motor Carrier Commission is an administrative tribunal made up of three commissioners appointed by the Lieutenant Governor in Council. It is an independent body operated within the Ministry of Solicitor General, and it works closely with the Motor Vehicle Branch (Figure 1).

Under the provincial *Motor Carrier Act* and the federal *Motor Vehicle Transport Act (1987)*, the Commission has broad powers to regulate both extra- and intra-provincial motor carriers that operate over the highways of British Columbia.

The authority of the Commission in this respect is fully spelled out in various sections of the *Motor Carrier Act* and Regulations. As well as having the power to grant or refuse applications for licences, the Commission is authorized to see that licensed carriers comply with the

Act and Regulations. These require the carriers to:

- ensure the mechanical safety of their vehicles, as specified in the National Safety Code;
- provide adequate and efficient service under the terms and conditions of the licence issued by the Commission;
- file and abide by their tariffs;
- comply with the requirements of the province's *Transport of Dangerous Goods Act*, the federal *Transportation of Dangerous Goods Act* and the Criminal Code; and
- obey any order of the Commission.

If the Commission believes the terms and conditions of a licence are not being adhered to, it has the power to amend, suspend or cancel the licence under Section 9 of the *Motor Carrier Act*.

Furthermore, the *Motor Carrier Act* gives the Commission the necessary authority to support its decisions. Under Section 40 the Commission has, in effect, the power of the Supreme Court in matters that fall within its mandate.

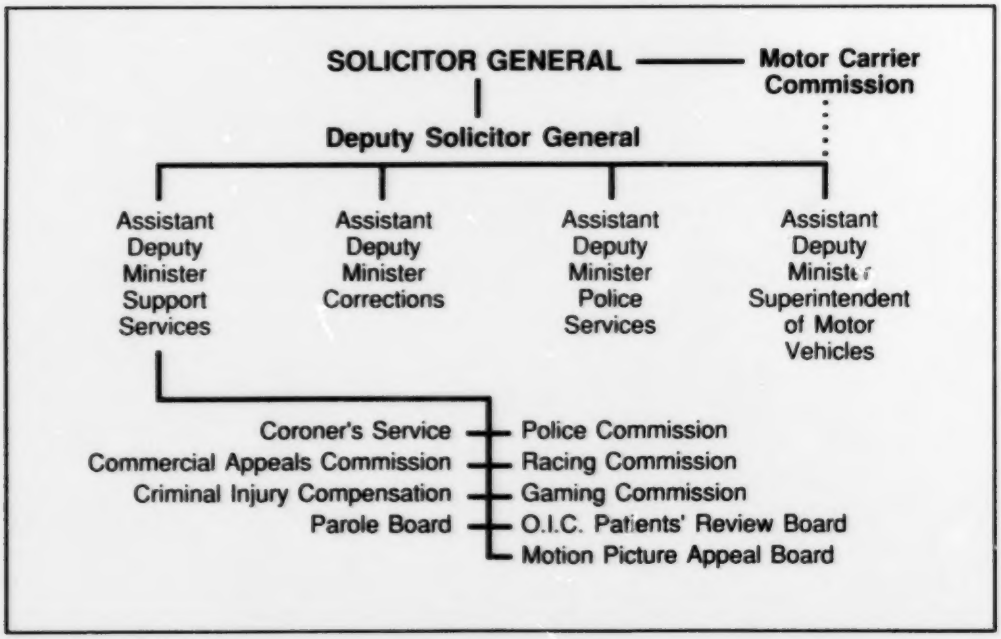


FIGURE 1. Organizational structure of which the Motor Carrier Commission is a part.

THREE MAIN AREAS OF LICENSING

The motor carriers overseen by the Commission fall into three main categories of operators: truck, bus, and taxi. The importance of all three segments of the motor carrier industry to the economy of the province cannot be over-emphasized. These operations provide an efficient and dependable system for transporting both freight and passengers within British Columbia, and to and from points outside the province.

The importance of truck, bus and taxi motor carriers cannot be over-emphasized. These operations provide an efficient and dependable system for transporting both freight and passengers.

In addition to generating revenues through the payment of wages, taxes and licences, these operations involve the purchase of equipment, repairs and fuel. All of this activity contributes significantly to the provincial economy.

Truck

Trucking is British Columbia's fifth largest industry. Reports from Statistics Canada for 1987 indicate that the for-hire (regulated) trucking industry in the province generated annual revenues of $996.9 million. If estimates of the value of the non-regulated trucking industry are included, the total becomes an impressive $1.993 billion. During the current licence year, the Commission issued a total of 42,158 licences.

Bus

The bus industry in British Columbia provides a vital transportation service for people, residents and visitors alike. Passengers include those travelling to and from work, vacationing, visiting, shopping or attending cultural and sports events both within the province and beyond its boundaries. During the year under review, the Commission licensed a total of 2,336 vehicles. Of the 408 bus companies registered in the province, 317 are based in British Columbia. This important sector has grown significantly over the last four years, with the number of vehicles licensed to operate in the province increasing by 20.2% over that period.

The estimates provided by the industry to the Commission indicate that about 4,394 people were employed to operate the approximately 1,000 buses based in British Columbia. The industry (excluding scheduled bus operations) generated approximately $100 million in revenue in 1990/91.

Taxicab

Taxicabs also move a large number of people in the province and to and from points outside British Columbia. They are generally limited to five passengers.

Limousines, which under the *Motor Carrier Act* are also classified as limited passenger vehicles, typically transport small groups, up to about seven passengers.

Taxicabs are usually thought of as providing a fast service, getting passengers to their destinations more quickly than buses. They also provide a flexible and individualized service, transporting, for example, children to school, longshoremen, pilots and trainmen to their work, and mailmen to their routes. As well, they move smaller freight items and documents, particularly at times when such service is not readily available from freight movers, and in emergencies move such items as blood plasma and medical supplies.

During the 1990/91 year under review, 2,238 taxicabs were licensed in British Columbia. According to industry estimates, these generated $166.3 million in that period.

The duties and requirements that all licensed carriers are expected to abide by are detailed in the *Motor Carrier Act* and Regulations. Copies of these may be purchased from the Motor Carrier Division.

APPLICATION PROCESS

To apply for a new licence authority, for an amendment to an existing licence authority, or for additional vehicle certificates, companies or individuals must file an application with the Motor Carrier Division (4240 Manor Street, Burnaby, B.C., V5G 3X5) on forms provided by the Division. Assistance to applicants, together with forms and informational guides, are available at that address.

The Commission considers all the information filed, and has the option of granting the application either completely or partially, refusing the application, or investigating further.

Once the application forms have been correctly completed and the required fees paid, the application is assigned a number and published in the "Summary of Applications and Decisions." This notice is circulated to subscribers, as well as being posted at the Division, weigh scales, and various other government agencies and offices.

Thirty days after publication, the application is investigated by Division staff through personal or telephone interviews with the applicant, their supporters, and objectors of record — generally other carriers. All of the available information filed in connection with the application by concerned parties is then carefully analyzed. Following that, the Division prepares a report which usually contains a recommendation that the application be, or not be, approved and, if it is, under what terms and conditions. This report, together with the application file, is forwarded to the Commission for a decision.

The Commission considers the report and all of the information filed, and makes the final decision. It has the option of granting the application either completely or partially, refusing the application, or, if there is opposition and it feels further investigation is required, deciding to schedule a public hearing.

All applications—except those for additional vehicles— generally require further investigation before being submitted to the Commission for a decision.

Temporary Permits

A temporary operating permit allows the holder to provide service to the public without first obtaining or altering an existing licence. This temporary exemption from the *Motor Carrier Act* gives operators the opportunity to respond immediately to the emergency requirements of trade and industry or the general public. The granting of such a permit is made strictly at the discretion of the Motor Carrier Commission, generally only to cover emergency needs. The holder of the permit is still subject to the safety provisions of the *Motor Carrier Act* and Regulations, to the same extent as if he were operating a licensed vehicle.

HEARING PROCESS

If the Commission decides that a hearing is needed to consider an application in more detail, regulations require that the applicant, should he wish to pursue the application further, file with the Commission $100 in security for the costs of the hearing.

Once this deposit is received, the Commission sets a hearing date and circulates a formal notice of hearing (containing the time, date and location of the hearing) to the applicant and all parties on record as being concerned with the application—parties who, in most cases, are objecting licensees. The objectors, if they wish to participate in the hearing, are also required to file with the Commission security deposits of $50, at least 10 days before the date of the hearing.

Procedures at hearings differ significantly between freight applications that are intra-provincial (within British Columbia) and those that are extra-provincial (crossing the borders of British Columbia).

Intra-provincial freight applications, as well as intra- and extra-provincial taxicab and bus applications, are heard and judged on a public need basis. The applicant in these circumstances must demonstrate public need and support for the proposed service. This is generally done through written documentation and the testimony of support witnesses. The applicant presents his case first and then the objectors present theirs.

Extra-provincial freight applications, on the other hand, are in a class by themselves. They are heard by the Commission on a "reverse onus" basis as required under the *Motor Vehicle Transport Act (1987)*, with the objectors presenting their case first. The objectors must prove to the satisfaction of the Commission that the granting of the application would likely be detrimental to the public interest. In that situation, the Commission may refuse the application. It might do so as well if the applicant shows a lack of fitness.

At a "Show-Cause" hearing (see "Hearings, Reviews and Appeals Explained"), the licensee is given the opportunity to show cause why his licence authority should not be suspended or cancelled for the various reasons specified in Section 9 (2) of the *Motor Carrier Act*.

At hearings conducted by the Commission, all parties are given a full and equal opportunity to present evidence, call witnesses, cross-examine witnesses, file exhibits, and give summations at the conclusion of the hearing. Evidence is given under oath and may be recorded. If any party does not agree with the decision of the Commission, that party may also ask for a review or file an appeal.

No party involved in a hearing is required to be represented by legal counsel, but many feel that the advice and experience of counsel in such circumstances enable them to present a more convincing case.

HEARINGS, REVIEWS AND APPEALS EXPLAINED

To dispel any misunderstanding within the industry or among the public over the meaning of the terms hearing, reviews and appeals under the *Motor Carrier Act*, the purpose, procedures, and implications of each are explained below.

Hearings

The vast majority of applications for new licence authority or amendments to existing licence authority are dealt with by the Commission without the need for public hearings. However, in cases where more information is required or some doubt exists about the support for or the opposition to the applications, the Commission may choose to hold a hearing. Such hearings are a well-accepted informational gathering process in the regulatory system.

All parties at hearings are given a full and equal opportunity to present evidence, call and cross-examine witnesses, file exhibits, and give summations.

As well, however, there are two other types of hearings which are not so frequently scheduled. First, are the hearings of complaints under Section 39 of the *Motor Carrier Act*. These are used to hear and determine the validity of complaints against a licensed carrier from a third party, generally another licensee. The second type are the hearings, generally referred to as "Show-Cause" hearings, under Section 9 of the act. These are designed to give the licensee an opportunity to show cause why his licence should not be amended, suspended or cancelled for the various reasons specified in that section.

Reviews

The Commission also has authority under Sections 31 (2) and 44 of the Act to review a previous decision if requested to do so by an applicant or any objector to the application, or by a third party concerned with the application. No time limit is set for the filing of a request for a review, but the passage of more time works against the request being granted. It should be clearly understood that the granting of a review is not automatic, but is made at the discretion of the Commission.

Appeals

Appeals, on the other hand, are an entitlement. Under Section 52(1), "any person who thinks himself aggrieved" by any decision made by the Commission under the *Motor Carrier Act* may file an appeal. However, to be acceptable, appeals must be filed with the Lieutenant Governor in Council within 30 days of the date of the order, decision, refusal, or other matter being appealed, and a copy served on the Commission before the expiry of 30 days. Appeals are heard not by the Commission, but by the Lieutenant Governor in Council.

TARIFF AND TIME SCHEDULES

Motor carriers licensed under the *Motor Carrier Act* are required to file their tariff rates with the Commission and to abide by the terms of the filed rates in assessing charges for the services they provide. Route and time schedules must be filed with, and approved by, the Commission in the case of licensed carriers operating over fixed routes on a time schedule basis. Changes or major reductions also require Commission approval.

Table 1 sets out the number of tariff and time schedule applications filed during the current licence year compared to previous years.

TABLE 1. Number of tariff rates and time schedules filed, 1987 - 1991

	1987	1988	1989	1990	1991
Tariff Rates	172	216	214	294	484
Time Schedules	28	14	25	34	28

The increase in rate filing is mainly due to the owner-operators dispute and the rapid increase in the price of fuel.

ENSURING COMPLIANCE

In co-operation with other agencies, the Motor Carrier Division participates in various compliance activities, including road checks, investigations of complaints, and random audits of the records of licensed motor carriers. Trucks, buses and taxicabs are examined at road checks for safety, proper licensing, and correct documentation. In the 1990/91 licence year, the compliance department handled a total of 331 complaint files.

To ensure compliance, the Commission investigates complaints and undertakes road checks and random audits.

The staff of the Motor Carrier Division also assist in training members of other enforcement agencies in motor carrier compliance requirements and procedures.

Penalties

To back up the regulations of the *Motor Carrier Act*, the Commission has several avenues of enforcement open to it, ranging from lenient to severe. Fines of between $250 and $500 for a first offence, and $500 and $1,000 for a subsequent offence, may be assessed by the Courts for any licensed carrier who violates the Act or commits any one of the several related infractions as set out in Section 53. Or, as pointed out previously, the Commission may at any time, under Section 9, amend or suspend a licence. After a hearing, it may cancel a licence.

Safety of Vehicles

All vehicles licensed under the *Motor Carrier Act* must satisfy strict safety requirements under the Commercial Vehicle Inspection Program, and must also qualify for a National Safety Code Certificate.

THE YEAR'S HIGHLIGHTS

Applications

A total of 2,601 applications were filed with the Commission during the 1990/91 licence year. Of these, 673 (25%) were for additional vehicles, and 1,928 (75%) were for new authority, alterations to existing authority, or transfers of authority.

This represents a decline of 31% in total applications over 1989/90. Figure 2 shows a comparison of motor carrier applications for three licence years, 1988/89, 1989/1990 and 1990/91.

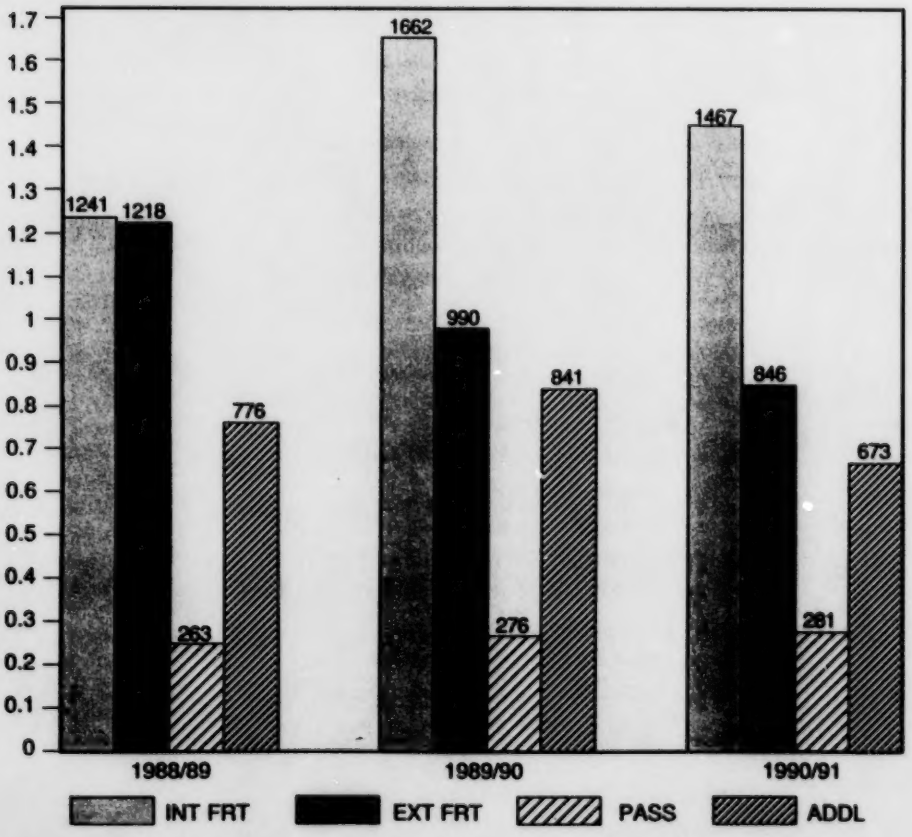


FIGURE 2. Number of motor carrier applications, 1988/89, 1989/1990 and 1990/91.

The number of temporary operating permits issued during the licence year 1990/91 are summarized below.

The number of permits issued represents a decline of 18% from the number issued in 1989/90. The main reasons for this change are the streamlining that has taken place in the issuing process, and the greater emphasis being put on determining emergency need before permits are issued.

TABLE 2. Operating permits issued during licence year 1990/91

Temporary Operating Permits	
Paid	7,385
Free	1,420
Emergency Breakdown Permits	430
Special Temporary Permits *(issued to carriers from provinces having reciprocity agreements with British Columbia, to allow the transportation of household goods)*	283
TOTAL	**9,518**

SUMMARY OF ORDERS AND DECISIONS OF THE COMMISSION

The Commission conducted a total of 83 public hearings during the 1990/91 licence year. This included 35 at which applications for licence authority, either new or revised, were considered, 27 at which the Commission reviewed previous decisions, and 21 at which licensed carriers were given the opportunity to show cause why all of their licences should not be cancelled.

The citizens of British Columbia can expect to receive sound program management from the Motor Carrier Commission. During the 1990/91 licence year, 83 public hearings were held.

Most of the hearings took place at the Commission's premises in Burnaby, B.C., but some were also conducted in various locations throughout the province, including Fort St. John, Dawson Creek, Prince George, Kamloops, Kelowna, Vernon, Clearbrook, Castlegar, Campbell River, Parksville, Nanaimo, and Victoria.

Some of the more important orders and decisions made by the Commission in 1990/91 are highlighted below. They are grouped by major category of motor carrier operator (truck, bus or taxi), and show the type of concerns addressed by the Commission during the previous licence year.

TRUCK

Optimistic Enterprises Ltd., Cranbrook, B.C. (Order No. 21-90)

Optimistic's application, including a request for one new limited freight clause authorizing service to one named shipper under contract, and nine additional public freight vehicle certificates, was the subject of a public hearing in Cranbrook.

The Commission, in its decision, stated that it did not hear any valid reasons at the hearing why the application should be refused, and therefore granted it as applied for.

Utility Public Freightways Ltd., Burnaby, B.C. (Order No. 28-90)

Utility Public Freightways Ltd. (the respondent) was notified a hearing would be convened at which the respondent would be given the opportunity to show cause why all the licences issued to and in their name should not be cancelled. The hearing was set down for August 16, 1989, and then adjourned generally before being reconvened finally on April 3, 1990. The respondent did not attend the reconvened hearing and was not represented. Despite the respondent's absence, evidence was presented to the Commis-

sion indicating that the respondent had closed down its entire operation and had not renewed any of its 10 licences for the 1990/91 licence year.

The Commission concluded that the respondent had failed to exercise any of the rights and privileges granted in its licences and had also failed to provide adequate and efficient service. The Commission therefore ordered that all of the licences issued to and in the name of the respondent be cancelled, and any rights and privileges conferred on the respondent by the licences be extinguished.

Byers Transport Ltd., Edmonton, Alta. (Order No. 33-90)

The hearing of the application of Byers Transport Ltd. (published number 1547/89) continued for five days. Among the facts and findings included in the decision, the Commission stated:

- that the applicant is a highly regarded, well-established motor carrier and has been providing service to and in British Columbia for many years;
- that the proposed schedule suggests an improvement in delivery times in certain points in eastern British Columbia; and
- that the objectors to the application have not established that the granting of the application would alter their operations to the extent that there would be an adverse effect on service to the public.

The application was granted as amended at the hearing.

Porter Trucking Ltd., Calgary, Alta. (Order No. 38-90)

Following a hearing, the Commission noted in its decision that:

- there was no compelling evidence presented at the hearing to show a lack of service, inadequate service, or a need for additional service to the areas attached to the application;
- the support material filed was generally lacking in detail on volumes and frequencies of service required; and
- the testimony of the witnesses presented by the applicant was not convincing and gave no indication of any difficulty in obtaining alternative service.

The Commission also took into account the recent granting of an application to Byers Transport Ltd. to provide service both to the Kootenays and the Okanagan area.

As well, the Commission stated it was not convinced that additional service was justified at this time along the lines proposed by the applicant, and therefore refused the application.

Jaycox Industries Ltd., Smithers, B.C. (Order No. 60-90)

The applicant, an expediter for the mining industry, was seeking to license two vehicles to provide road transportation services for that industry in northwestern British Columbia.

The Commission, in its decision, noted that it is fully aware of the value of the mining industry to the economy of British Columbia, and of the industry's need for reliable and readily available road transportation services. It noted as well that the objecting carriers are doing well and have been expanding their service over the past few years. The applicant was granted authority to license one vehicle only to operate under some restrictions and under revised wording.

Douglas Delivery Ltd., Port Coquitlam, B.C (Order No. 69-90)

The applicant, a licensed carrier, was seeking to amend its licence authority so as to permit the hauling of general freight on a charter trip basis from points on the Lower Mainland to points on Vancouver Island or vice versa.

The Commission stated in its decision that it was not satisfied on the basis of the testimony, evidence, exhibits and summation presented at the hearing that a public need had been demonstrated for the service proposed to be offered by the applicant on what appears at this time to be an overserviced lane of traffic. Accordingly, the application for amendment was refused.

Ican Transport Ltd., Campbell River, B.C. (Order No. 76-90)

This applicant was seeking two new Class 3 public freight vehicle certificates to haul various commodities from the Lower Mainland and Nanaimo to deliver to Campbell River and points on Vancouver Island north of Campbell River, including Quadra Island or vice versa.

In its decision, the Commission ordered the applicant to cease providing transportation service to other than the one named shipper with whom the applicant has a contract and to whom it is corporately related.

The Commission refused the application as filed, and instead granted a more restrictive licence authority. It noted as well that the applicant's operations would be monitored for a period of one year and any further violations harshly dealt with.

West Coast Freightlines Ltd., Edmonton, Alta. (Order No. 82-90)

In its order dated October 17, 1990, the Commission suspended until further notice all of the motor carrier licence authority issued to West Coast Freightlines Ltd. (the respondent). The Commission noted that a Show-

Cause hearing had been scheduled for January 9, 1991, but that in the interests of safety on the highways of the province it was prudent to suspend the respondent's licence authority until the results of that hearing were determined.

Husky Transport Ltd., Fort St. John, B.C. (Order No. 17-91)

The application for additional licence authority was refused, then reviewed in Fort St. John. No objectors appeared and none were represented at the hearing.

Two principals of the applicant company testified at the hearing as to the need for the additional licence authority applied for. The Commission gave an oral decision at the conclusion of the hearing, indicating that the application would be granted by written order.

BUS

Silver Fox Coachlines Ltd., Burnaby, B.C. (Order No. 4-91)

The application was refused, then reviewed. Three objectors attended and participated in the review hearing. Counsel for the applicant argued that the summer demand for coaches, the support of other licensed carriers, and the need for first class services supported the application. The objectors argued that no evidence of public need or necessity had been offered.

The Commission concluded, after considering all the information before it (including the applicant's request to reduce the scope of the application), that its original decision should be varied in favour of the applicant. It therefore granted the application in part.

TAXI

Sardis Taxi Ltd., Sardis, B.C. (Order No. 93-90)

This applicant was seeking authority to provide a limited passenger (taxi) service originating in the Chilliwack area, transporting passengers to various points in British Columbia or vice versa.

The Commission expressed its satisfaction beyond a reasonable doubt that there was a quality and permanence of service offered by the applicant, as well as evidence of fitness, willingness and ability to provide a continuing service.

The application was granted in a modified form.

Complete texts of the orders and decisions summarized on pages 14 through 17 are reproduced in Appendix 1.

FEES AND REVENUES

A total of $4,535,115 was paid into General Revenue for the licence year 1990/91, an amount $87,832 more than that earned in 1989/90. Table 3 summarizes the fees and revenues collected in the year in review. Annual comparisons of the gross revenue for the last four licence years is shown in Figure 3.

TABLE 3. Total Revenue for the Licence Year 1990/91

Licence fees	$4,061,185
Filing fees	323,965
Temporary permits	127,357
Miscellaneous	22,608
TOTAL	**4,535,115**

Kind of Licence	1987/88	1988/89	1989/90	1990/91
Passenger (buses)	$236,957	$156,011	$225,047	$203,059
Passenger (taxis)	157,984	187,213	215,086	194,531
Public and limited freight	2,234,932	2,776,995	3,557,156	3,663,595
Permits	58,545	68,122	64,725	127,357
Miscellaneous (incl. filing)	152,875	369,692	385,259	346,573
TOTALS	**2,841,293[a]**	**3,558,033[b]**	**4,447,273[c]**	**4,535,115[d]**

(a) The increase in revenue is due mainly to revisions to the fee schedule.

(b) Filing fee, licence fee and permit fee increases reflect the fee structure in 1987.

(c) Renewal fees for licence year 1990/91 were received in January and February 1990, and included a fee increase.

(d) Permit fees increased in March 1, 1990, resulting in increases in the licence year 1990/91.

FIGURE 3. Comparison of gross revenue collected by the Motor Carrier Commission, 1987/88-1990/91.

THE COMMISSIONERS

William H. Preston
Chairman

William Preston, Chairman of the Motor Carrier Commission since July 1990, brings to the position over 35 years of managerial and professional experience in operations, finance, public administration, personnel and government agency relations. Before his appointment as Chairman, he served for two years as a Commissioner.

Mr. Preston has held senior executive positions in a wide range of industries, including telecommunications, steel distribution, construction, computer marketing, health care and fund raising.

William M. Gartside, William H. Preston, Ian W. Craig

Ian W. Craig
Commissioner

Since February 1984, Mr. Craig has served as a Commission member. He also represents British Columbia on the Standing Committee of Motor Carriers, set up under the Canadian Conference of Motor Transport Administrators. Amongst his professional accomplishments has been the development of the first uniform application form for all Canadian jurisdictions under the Motor Vehicle Transport Act (Canada).

Mr. Craig has had over 25 years of experience in the trucking and general transport sectors. He has been Vice-President and a Board Member of the Canadian Association of Fleet Supervisors, and a member of the Board of Directors of the B.C. Trucking Association.

William M. Gartside
Commissioner

Mr. Gartside joined the Commission in November 1990, following a long career in the trucking industry. He has been owner and president of several truck transport companies in British Columbia, Alberta and Washington, and has held top positions in numerous transport-related organizations. Amongst these positions have been Director and President of the B.C. Labour Relations Association, Director and President of the B.C. Trucking Association, and Vice-President of the Canadian Trucking Association.

In 1978, Mr. Gartside received the B.C. Transport Award of Merit, and in 1986 he received the "Trucker of the Year" award.

APPENDIX 1: MINUTES OF SELECT HEARINGS

PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of Application No. 2710/89
of Optimistic Enterprises Ltd.

Before: Gerard M. Morris, *Chairman*,
and Ian W. Craig, *Commissioner*.

Dated the 20th day of March, 1990

ORDER

The application of Optimistic Enterprises Ltd. (Optimistic), published as No. 2710/89, came before the Motor Carrier Commission at Cranbrook, B.C. on February 28, 1990, for hearing.

Optimistic was seeking authority through this application to provide service to one named shipper, Crestbrook Forest Industries Ltd. (CFI) transporting lumber (rough and finished), stickers and veneer strips, within Licence District No. 1. Nine (9) additional Public Freight Vehicle Certificates were also being sought.

Optimistic was represented by Counsel, Mr. R.W. Macdonald. The five qualified objectors in attendance were represented as follows: Mohawk Terminals Ltd. by Counsel, Mr. T.G. Colgur, Fox's Transport Ltd., MSR Transport Ltd., W. Barker Contracting Ltd. and W.N. Trotter trucking Ltd. by Counsel, Mr. P.B. Joyce.

H. & E. Rotvold Trucking Ltd., which had filed the mandatory $50 security deposit, was not in attendance and was not represented. Mr. Macdonald advised the Commission that Rotvold's participation in the hearing if they appeared would be challenged on the grounds that they failed to comply fully with the requirements of Regulation 4.16 of the Motor Carrier Act, in that they did not mail a copy of their objections to Optimistic.

Mr. Macdonald, in presenting the case for Optimistic, first made a brief opening address, after which he called three witnesses. During the course of the hearing he also filed a number of exhibits, cross-examined the witnesses called by the objectors, and delivered a final summary at the conclusion of the hearing.

In his opening address, Mr. Macdonald noted that CFI was the major employer in the Cranbrook area and required reliable transportation between its mills and three different rail points. He advised that CFI had sought tenders for this work in the fall of 1989 from a select group of carriers, and that Optimistic had been awarded the contract, but afterwards there had been complaints from a number of local motor carriers about the tendering process. Subsequently, the tender was advertised in the local paper and bids were open to anyone. Optimistic was again the successful bidder and the contract was awarded to that company.

Mr. Bill Luke, the first witness called by Mr. Macdonald, manager of lumber sales for CFI, stressed the importance of the mill to the Cranbrook area generally. He advised that CFI does some 251 million dollars business annually, employs over 1300 people, and ships most of its lumber to points in the USA. Reliable transportation by rail and particularly by road is critical to the operation. He related the company's experience with the tendering process and the events leading up to the decision to re-tender due to complaints from local carriers. He explained the difficulties CFI had previously with a number of suppliers of transportation services and the events which led up to the decision to award the contract to Optimistic.

Mr. Don DeBuysscher, president and principal shareholder of Optimistic, in his testimony, first related his experience in the trucking business, which commenced in 1978 when he applied for and was granted his first licence authority to transport chips, hog fuel and related materials. His company now employs 14 people and operates 14 pieces of assorted equipment. He noted that his licence authority had been increased over the years and that his firm had never objected to an application filed by any other carrier.

He related the circumstances leading up to his original bid for the CFI contract. This bid was successful and he started to provide service. He noted that most of the lease operators who had been working for the previous carrier were now providing the same service for him. All of the lease operators appeared to be doing quite well at the present time and are providing excellent service to the named shipper, CFI.

Mr. Linden Burt, the third witness, a lease operator working for Optimistic, testified to his satisfaction with the present arrangement and expanded further on the difficulties he had with previous trucking company employers, particularly with respect to lack of payment for the services provided, and being asked to take cuts in pay.

The two Counsel for the group of objectors called a total of five witnesses, cross examined the witnesses called by the applicant, filed a number of exhibits and also presented summations at the conclusion of the hearing.

Mr. Colgur called on witness, Mr. W.E. Molnar, the general manger of Mohawk Terminals Ltd., who had previ-

ously provided service to DFI. He related that he had in fact succeeded another carrier by the name of Pine Grove Industries Ltd., providing service after that company ran into various difficulties. Mr. Molnar stated that he had ensured that service to CFI was not interrupted when Pine Grove failed and then continued to provide essential transportation service to them.

Mr. Molnar testified that, at a luncheon meeting in the fall of 1989, Mr. Luke raised the question of new rates and asked what increases Mohawk might be seeking. Mr. Molnar, who had a .22 shell in his pocket (he noted he had been on a hunting trip) jokingly replied 22%. It was established that Mr. Luke said, "We'll have to put it out to bid and you'd better come in with your best figure". Mr. Molnar stated that he subsequently gave Mr. Luke a rate sheet prepared by one of his employees but not checked with him. This rate sheet when examined later was found to contain rate increases varying from 16.7% to 59.9%. Mr. Molnar, in his evidence, suggested that in his opinion this was not a bid or tender but merely a sheet for negotiation purposes.

It should be noted that the actual rate sheet submitted to Mr. Luke was subsequently questioned by him when he was recalled to the witness stand at the conclusion of the hearing, and a different rate sheet was provided and identified by him as the rate sheet given him by Mr. Molnar.

In continuing his testimony, Mr. Molnar stated that subsequently a letter dated December 19, 1989, was received from Mr. Luke advising that the contract had been awarded to another carrier effective at 5 p.m. on the date of the letter. When the tender was advertised generally, Mr. Molnar submitted a formal bid which, in his view, was very comparable to that of Optimistic, but to his dismay the contract was again awarded to the applicant in these proceedings.

The four witnesses called by Mr. Joyce, except for one lease operator, generally testified to the ability of their own firms to provide the service required by CFI, through their own means or by hiring additional lease operators as had the applicant. It was revealed that W. Barker Contracting Ltd., MS Transport Ltd. and Fox's Transport Ltd. had also filed tenders in response to the advertisement placed in the local paper by CFI but had been unsuccessful. It was disclosed that Fox's Transport Ltd. failed to bid on one portion of the haul for dressed lumber and their bid was therefore not considered. Mr. William Jacobson, a lease operator employed by W. Barker Contracting Ltd., related his experience both with Pine Grove and Mohawk, and how he had been left owing money by Pine Gove and how he quit Mohawk because there was no work for his vehicle.

In summary Mr. Joyce pointed out first that one of the Commission's responsibilities was to foster sound economic conditions in the transportation business of the province, and it must consider the long term effects of the closure by Cominco of the (silver mine) in Kimberly. He called CFI the "corporate bully" which grinds up its carriers, that is why there is the spectacle of lease operators being unpaid. He noted that many of the other local carriers can provide the service required and no more licence authority should be given to the applicant. The local carriers are very concerned, Mr. Joyce said, and that is why they are in attendance at the hearing objecting to the application. He closed by asking that the application be refused.

Mr. Colgur suggested that the existing situation really was a direct result of the earlier collapse of the Pine Grove operation. He again reviewed the history and relationship of Pine Grove, Mohawk and CFI and the manner in which the services of the trucking companies were sought. He called the system "irregular" and pointed out that the Fox bid was rejected out of hand because it was not complete. Mohawk's bid was lower than Optimistic but was rejected because it was too low. Mr. Colgur expressed the view that additional licence authority is not required and in fact is in excess of the requirements for the area. Fox alone, he said, could provide the service required by CFI. Mr. Colgur also made reference to the closure of the mine in Kimberly, the impact of which has yet to be felt in Cranbrook. In closing he asked the Commission to judge carefully the credibility of the witnesses heard and the weight of their evidence and to decline the application as being unnecessary.

Mr. Macdonald, in his final summation, pointed out that all of the carriers present had an equal opportunity to bid on the contract with CFI. He noted that CFI was not required to advertise the tender but did so of its own volition so that every qualified bidder would have the chance to bid. CFI he said had understood the Commission's decision to set this application down for public hearing so that the concerns of all of the local carriers could be fully aired. Both Mohawk and Optimistic had submitted bids and they had been fully considered by CFI before the contract was awarded to Optimistic. Mr. DeBuyssher, the owner of Optimistic, is a long time local resident and is able to provide a dependable service to CFI. Mr. Macdonald defended CFI by saying that in his view the company is a good corporate citizen, not the "corporate bully" described by Mr. Joyce. In closing, Mr. Macdonald asked that the application be granted as filed.

The Commission is moved here to comment that in its view there was considerable testimony and evidence adduced at these proceedings regarding issues that were not particularly germane to the specific matter under consideration, as well as some conflicting evidence which raised questions of credibility.

Nevertheless, the Commission, before arriving at its decision, carefully reviewed all of the testimony heard, the exhibits filed, and the summation so ably presented by all three Counsel.

The Commission notes that not one new job is being created here and the refusal of the application would not mitigate in any way the impact that might be felt in Cranbrook as a result of the closure of the mine in Kimberley. The Commission has also noted the confusion relating to Mohawk's bid in which the "discussion rates" tendered differed from the formal bid submitted to approximately 40%, and feels that this

disparity may have caused CFI to have concern as to its validity and the possible detrimental effect on the lease operators.

In considering the argument of the impact that might be felt in Cranbrook as a result of the closure of the mine in Kimberley, the Commission believes that the contract was awarded before the closure was announced and that, in essence, the allocation of this contract in no way affects the employment picture. The lease operators employed by Optimistic, with a few changes, are generally the same as those formerly employed by Mohawk when they had the contract and likely would not change to any degree if the application of Optimistic were to be refused.

The Commission did not hear any valid reasons at this hearing why this application in the form of a request for one new Limited Freight Clause authorizing service to one named shipper and nine additional Public Freight-vehicle Certificates should be refused.

ACCORDINGLY THE MOTOR CARRIER COMMISSION ORDERS THAT Application No. 2710/89 of Optimistic Enterprises Ltd. be and it is hereby **granted as applied for.**

IT IS FURTHER ORDERED THAT the applicant and all of the objectors named herein be and they are hereby assessed costs in the amount of the security deposits filed by them beforehand.

BY THE MOTOR CARRIER COMMISSION:

John Kosowick,
Secretary to the Commission

APPROVED BY:

Gerard M. Morris,
Chairman

Ian W. Craig,
Commissioner

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;
And in the Matter of the
Motor Vehicle Transport Act, S.C. 1987, Chapter 35;

And in the Matter of a Show Cause Hearing
pursuant to Section 9 of the *Motor Carrier Act;*

And in the Matter of
Utility Public Freightways Ltd. (Respondent)

Before: Ian W. Craig, *Commissioner*
and W.H. Preston, *Commissioner.*

Dated the 4th day of April, 1990

ORDER

The hearing at which Utility Public Freightways Ltd. (the respondent) was to be given the opportunity to SHOW CAUSE why all of the licenses issued to and in their name should not be cancelled, which had been adjourned generally on August 16, 1989, was reconvened on Tuesday, April 3, 1990.

At the reconvened hearing the respondent was not in attendance and was not represented. The evidence regarding the allegations that the respondent failed to exercise any of the rights and privileges granted in the license and failed to provide an adequate and efficient service was presented to the Commission by Counsel Mr. R. Bell through one witness, Mr. G.R. Wright, an Inspector with the Motor Carrier Division.

Inspector Wright testified regarding the investigation he had carried out with respect to the matter under consideration, which investigation included his attendance at two different business premises, each of which had at one time been occupied by the respondent, but then vacated. He also noted failure on the part of the respondent to give proper notice to the Commission of any change of address; the cessation of scheduled service on or about May 1st, 1989 without the prior approval of the Commission and without notice either to the public or to the Commission; and the subsequent complete shutdown of the respondent's entire operation sometime between May 17, 1989 and July 14, 1989. In addition, he testified that none of the ten licenses of the respondent had been renewed for the 1990/91 licence year.

Following that testimony Mr. Bell, in his argument, suggested that the Commission could find as facts that:

a) on or about May 1, 1989 the respondent ceased to provide its scheduled Class I Public Freight Vehicle Service;
b) on or about July 14, 1989 the respondent ceased to provide any service under its own licenses;
c) on or about August 14, 1989 the respondent ceased entirely from carrying on the business of the movement of freight;
d) no complaints have been received by the Division regarding the lack of freight service to and from the areas served previously by the respondent.
e) the respondent has not renewed any motor carrier licenses for the year 1990/91.

Mr. Bell then made a submission that the the forgoing evidence supports findings that:

1. the respondent has failed to exercise any of the rights and privileges granted in its licenses for a period from August 14, 1989 to present time;
2. the respondent has failed to provide adequate and efficient service.

In closing Mr. Bell recommended that the Commission

ORDER that all of the licenses issued to and in the name of the respondent be cancelled and that the rights and privileges conferred on the respondent by the said licenses be extinguished.

Based on the evidence and testimony before it, the Commission has concluded that the respondent has failed to exercise any of the rights and privileges granted in its licenses and has also failed to provide adequate and efficient service.

ACCORDINGLY IT IS ORDERED THAT all of the licenses issued to and in the name of Utility Public Freightways Ltd. be and they are hereby cancelled and any rights or privileges conferred on the respondent by the licenses be and they are hereby extinguished.

BY THE MOTOR CARRIER COMMISSION:

John Kosowick,
Secretary to the Commission

APPROVED BY

Ian W. Craig,
Commissioner

W.H. Preston,
Commissioner

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of the Application of Byers Transport Ltd., Published as No. 1547/89.

Before: Gerard M. Morris, *Chairman*,
Ian W. Craig, *Commissioner*
and W.H. Preston, *Commissioner*

Dated the 1st Day of May, 1990

ORDER

The application of Byers Transport Ltd. (the applicant), published as No. 1547/89, came before the Motor Carrier Commission in Burnaby, B.C. on March 5, 1990 for public hearing. The hearing continued for 5 days before being concluded on March 9, 1990.

The applicant was represented by Counsel, Mr. T. Robbins, who was assisted by Counsel, Mr. C. Weafer. The qualified objectors were represented as follows: Van-Kam Freightways Ltd. by Counsel,

Mr. R.W Macdonald; Danco Transport Ltd., CP Express and Transport Ltd., Rocky Mountain Transport Ltd., and Clark Reefer Lines Ltd. by company officials, respectively, Messrs. G.I. Danish, B. Smith, G. Sengotta and O. Sloan.

Page 2 of the application was amended at the commencement of the hearing in order to clarify its intention and subsequently, after discussions regarding the corporate relationship of the applicant to CP Express & Transport Ltd., a proposed restriction was put forward by Mr. Robbins for the consideration of the Commission.

In presenting the case for the applicant Mr. Robbins called a total of 21 shipper witnesses, as well as a corporate witness, the applicant's vice-president and general manager, Mr. R. Marinoske. A number of letters of support were filed, 62 in Exhibit No. 2 filed by the Commission, 159 in Exhibit No. 9 and 41 in Exhibit No. 10, both filed by Mr. Robbins, who noted there were some duplications. Other exhibits were also filed during the course of the hearing by Mr. Robbins, including a corporate exhibit book containing information as to the company's history and other relevant facts and data.

In addition Mr. Robbins filed an analysis of volumes of freight and the destinations thereof indicating that a total tonnage of 2,005,500 pounds per month of freight was reflected in the evidence of the witnesses and in the letters of support. Mr. Robbins also cross-examined the witnesses called by the objectors and presented final argument at the conclusion of the hearing.

The twenty-one shipper witnesses represented widely diversified business operations. Deck Electric Contracting located in Invermere, B.C., represented by Mr. M.V. Casey, for example, is a small shop employing perhaps four to five individuals, while Westar Mining Company, represented by Mr. E. Lonsdale, employs over two thousand.

Mr. Casey testified that his company brings in approximately 12 shipments a year of armoured cable weighing 350 to 400 pounds each from the Lower Mainland. He complained about the lack of overnight service to his area and the difficulties he experienced in one particular case regarding an interline foul-up which resulted in him waiting six days for delivery. He felt that the service would be improved if Byers was to provide a competitive direct service without use of an interline carrier.

Mr. Lonsdale, whose employer operates two coal mines in the Sparwood area, testified that his volumes of freight range between 35,000 and 70,000 pounds monthly from the Lower Mainland, all in less than truck load lots. The mines require delivery by 2:00 or 3:00 p.m., but often have to wait until 5:00 or 6:00 p.m. or later, and this causes them some problems. He had been informed that the applicant, which presently provides service to the mines from Alberta points and has a terminal in the Sparwood area, could have freight from the Lower Mainland to the mine site by 1:00 to 1:30 p.m. the very next day. He also related an experience he had with a large ventilating fan which was lost in transit by another carrier and did not arrive until eight days after shipment. In conclusion, he expressed the need of his firm for a dependable LTL overnight service to the mine sites from the Lower Mainland.

The other shipper witnesses, most of whom had used the services of the applicant company from points in Alberta, primarily Edmonton and Calgary, were generally well satisfied with that service, but wished to have an alternative service from the Lower Mainland so that they could have a choice and not have to depend on carriers who were not providing an adequate service.

Mr. Marinoske, in his testimony, reviewed the contents of Exhibit No. 6 (the corporate exhibit) which included a history of the applicant company, the expenditures of the applicant in B.C., employee information, the equipment operated, terminals and agencies in the various areas, letters of commendation and a proposed operating plan in this province, generally relating to service which would be available between the Lower Mainland and various points in B.C. He indicated that the scheduled service proposed could be put into place within one week of the granting of the application and that a terminal would be established in the Lower Mainland if the application were granted, and anticipated volumes were achieved. He noted that his company would not object to an application from the objectors to operate within his home province of Alberta.

Mr. Macdonald did not call any witnesses on behalf of Van-Kam Freightways Ltd., nor did Mr. Sloan for Clark Reefer Lines Ltd. Mr. Danish of Danco Transport Ltd., who had participated on the first and second days of the hearing, was called away on business, but left a written summary which was subsequently read into the record.

The Commission heard evidence from two of the objectors, CP Express and Transport Ltd., represented by Mr. Bruce Smith, and Rocky Mountain Transport Ltd., represented by Mr. Gerry Sengotta. Mr. Smith pointed out that his company is unable to provide an LTL service to Golden because of Clause 12 of its Conditions of Licence. He produced a schedule indicating the areas CPET serviced daily and stated that taking an average weekly summary for traffic within B.C., 94% consisted of one day over-night service and if one more day for odd shipments was added, that figure increased to 98.9%. He stated that Golden is no longer a viable run for CPET (for example, they had had no shipment for Golden during the last two weeks) and they now interline Golden freight at Vernon. During the last one and a half years there had been an influx of extra-provincial carriers picking communities to service with very few retrictions placed on them. At one time CPET had terminals at 9 points in the province, but not today as they were no longer economically viable.

Mr. Sengotta, in his testimony, stated that his company commenced service in 1950 and in 1954 was incorporated as Rocky Mountain Transport Ltd, which is a 100% family owned business. His company expanded in the 1950's to better serve their customers, and now has 24 full time employees. In the last four years he has been granted general freight authority from Vancouver to Vernon on a restricted basis. He finds these runs increasingly marginal because of the zealousness of carriers who start but then withdraw, leaving the business to be interlined. He stated he had no problem with Byers carrying lumber, but there were no letters of support for Revelstoke and Salmon Arm and only two from Armstrong. He would like to service Golden daily but there was not enough support for it and there would be over nine carriers serving Golden if all the carriers licensed provided service. He can't compete with Byers on a scheduled basis, he said, and estimated he would lose $220,000 a year if the authority is granted.

In closing argument, Mr. Sengotta suggested that he felt that the Commission has already granted too many licences to serve the Salmon Arm/Revelstoke/Grand Forks areas which has caused further hardship on the existing carriers, who have found it necessary to purchase competitors and reduce service. In conclusion he indicated that his company could not survive more competition and that if the licence is granted, some relief should be given to Rocky Mountain Transport by reducing their scheduled run requirements.

Mr. Sloan opened his summary by noting that Clark Reefer Lines had attended the hearing not to badger the shippers or witnesses but to have the opportunity to address the Commission.

He indicated his company is prepared to compete with all comers but he was concerned about the possibility of predatory pricing by way of lower freight rates. He also reviewed the testimony of some of the shipper witnesses and suggested that perhaps the application was made more to satisfy the needs of the applicant than to service its customers. He concluded by saying that the application under consideration is a serious threat to the survival of Clark Reefer Lines which has not been able to expand as it has been refused authority to serve some areas of the province.

Mr. Smith, speaking for CP Express & Transport Ltd., also reviewed the testimony of the shipper witnesses called by the applicant. He felt the letters of support did not make specific reference to their true shipping needs. He too expressed the opinion that the application was filed more in the interests of the applicant than those of the shipping public.

He also commented on the closure of the Sullivan mine, which would translate into a loss of $25,000 per month in revenue to his company's Cranbrook terminal. He predicted that the granting of the application would adversely affect the existing carriers by reducing the available backhaul. This would result in increased freight rates to smaller communities. He requested that the application be refused.

Mr. Macdonald began his summation by indicating that it would differ from that offered by the other objectors. He then raised the question of the danger of domination and concentration in the transportation market-place. He felt that there was clear evidence in this case of the growing domination of the trucking industry by the larger carriers, which is not in the public interest.

He also viewed the letters filed in support to be more like letters of commendation, containing no evidence of need, no criticism of the existing service and no justification for the granting of the application.

In closing he noted the corporate relationship between CPET and Byers and suggested that the granting of the application would result in two duplicate licence authorities being issued. The Commission, he added, must protect the public interest and refuse the application.

Mr. Robbins, in his final summary, opened by suggesting that the applicant lives up to its motto — service, stability, commitment — which is imprinted on the cover of its book of exhibits (Exhibit No. 6). Twenty two shipper witnesses expressed their desire for the same quality of service provided by Byers to the Okanagan, East and West Kootenays and Kamloops. He noted that the applicant, which has operated in British Columbia for over 20 years, has fully staffed terminals located in Penticton, Kelowna, Vernon, Kamloops, Golden, Cranbrook, and Sparwood, as well as fully staffed agencies in Invermere, Revelstoke, Creston, Castlegar and Vancouver. This resulted in more terminals and agency facilities in the southern B.C. interior than any other LTL carrier presently serving the area.

He noted that Van-Kam's Counsel, Mr. Macdonald, had been an active participant in these proceedings but, other than about 10 minutes on two mornings, no one from Van Kam has considered it important enough to attend the hearing. He noted as well that Van-Kam failed to call any evidence at this hearing to substantiate its objection. He suggested that Van-Kam did not want it revealed that it is a very profitable carrier, maybe the most profitable in B.C., and perhaps they did not want to admit that they are not living up to their responsibilities to provide a Class I service to the East and West Kootenays.

Mr. Robbins then questioned the failure of Clark Reefer Lines Ltd. to give any evidence and subject itself to cross-examination. Clark, he said, has an LTL reefer monopoly in the Kootenays and the shipper witnesses strongly asked for a competitive service. Clark offered no evidence that its economic condition would be hurt by the granting of this application.

Mr. Robbins reviewed several of the letters of support filed and the testimony of some of the witnesses presented by the applicant, as well as outlining the type of service that had been available to them.

He continued by dealing with the corporate relationship of Byers and CPET, noting that both carriers compete head on for every ounce of freight and operate independently of one another. Mr. Robbins suggested that if the Commission was concerned about this, it could be dealt with under the Competition Act or through the restriction proposed at the outset of the hearing, which he felt would protect the public from any sort of consolidation between the applicant and CPET.

In closing, Mr. Robbins noted that the B.C. economy is strong and there is no reason why the granting of the application should cause any problems to CP Express & Transport Ltd., with whom the competition would be most severe. He stated that the application is very well supported and Byers should not be singled out because its headquarters is in Alberta. He noted that Byers has paid its dues in B.C. by serving remote communities and paid nearly two million dollars to its B.C. employees in 1989. More importantly the witnesses have said they would rather buy in B.C. and if this authority is granted, their goal of purchasing within this province could be achieved. He urged that the Commission grant the application and thus permit Byers to compete in southern B.C.

Before a decision was arrived at, the Commission was informed by Mr. T. Robbins, Counsel for the applicant in correspondence dated April 4, 1990, that effective on that date the applicant's parent company, Laidlaw Inc., had entered into an agreement to sell all shares in Byers Transport Ltd. to Herbert J. Assman and his son, John K. Assman, through a holding company, Hajah Inc., the sole shareholders of which are the Assmans.

Subsequently, after receiving submissions with regard to this change in ownership from a number of objectors, the Commission notified all of those who had participated in the hearing that it would be reconvened on Thursday, April 19, 1990, to give them an opportunity to make germane comments on the application in light of the new circumstances.

At the reconvened hearing, Mr. Robbins called two witnesses. The first was Mr. Herbert J. Assman who testified regarding the negotiations which took place prior to the acquisition, the manner in which the acquisition was financed and the plan for operating Byers. He also indicated that the operation of his company, Prince George Warehousing Co. Ltd., would be kept separate from Byers, but the latter would receive an injection of B.C. outlook and B.C. philosophy. In addition he responded to questions regarding the financing of the acquisition by stating that financing was obtained from the usual institutions in the usual manner and not from a trucking company or anyone interested in a quick flip of the licence authorities held by Byers.

The second witness, Mr. R. Marinoske, the vice-president and general manager of Byers prior to the acquisition who is being maintained in that position, testified regarding the uneasiness of his staff members originally on learning of the change of ownership but the realization later that it might be a good thing for all concerned to work for an upper management who knew the trucking business as well as did the Assmans. He also stressed the importance to Byers of having the application granted.

The representatives of the objectors present, Van-Kam Freightways Ltd., CP Express & Transport Ltd. and Clark Reefer Lines Ltd., did not call any witnesses themselves, but cross-examined the two witnesses called by the applicant and offered brief summations at the conclusion of the proceedings, as did the applicant.

The concerns of the objectors at the reconvened hearing, judging from their questions and summations, appeared to be centered primarily on the financing for the acquisition of Byers, including the source, the terms and the possibility of the Assmans losing control.

At the conclusion of the reconvened hearing, the Chairman asked Mr. Assman to provide the Commission with certain financial information, including details as to the sources of the financing for the purchase of the Byers shares, the terms of repayment, and the penalties in the event of failure to meet those terms.

After considering all of the information before it, including the evidence and testimony presented at the hearing, as well as the financial information provided subsequently by Mr. Assman, the Commission makes the Findings of Fact which follow:

1. The applicant is a highly regarded, well-established motor carrier, and has been providing service to and in B.C. for many years;
2. Generally the applicant has provided an extra-provincial service, both TL and LTL, and has concentrated, in particular, on the eastern part of British Columbia;
3. More recently the applicant has established a terminal in Vancouver to serve the Yukon Territory;
4. The applicant's case was well presented and supported by a significant number of witnesses and a substantial number of letters of support;
5. The applicant will offer a competitive service for all LTL freight, including refrigerated service, and the proposed schedule suggests an improvement in delivery times to certain points in eastern B.C.;
6. The objectors to the application did not establish that the granting of the application would affect their operations to the extent that there would be an adverse effect on service to the public.
7. The Commission found both Mr. Assman and Mr. Marinoske to be open and frank in their testimony and believes that it is their sincere intention to keep separate the operations of Prince George Warehousing Co. Ltd. and Byers Transport Ltd.

The Commission has concluded, therefore, that it is in the public interest to grant the application.

In view of the change of ownership which has taken place, Mr. Robbins' motion to delete from consideration the restriction proposed by him at the commencement of the hearing, which was intended to alleviate concerns by the objectors regarding the former corporate relationship between the applicant and CP Express & Transport Ltd., is approved.

THE COMMISSION ORDERS THAT THE application of Byers Transport Ltd., published as No. 1547/89, be and it is hereby granted without the restriction referred to above, but as amended at the hearing (a copy of the amendment is attached hereto).

THE COMMISSION ORDERS FURTHER THAT the security deposits filed by the applicant and by the qualified objectors be set off against the costs of this hearing.

BY THE MOTOR CARRIER COMMISSION:

John Kosowick,
Secretary to the Commission

APPROVED BY:

Gerard M. Morris,
Chairman

Ian W. Craig,
Commissioner

William H. Preston,
Commissioner

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of Application No. 2238/89
of Porter Trucking Ltd.
Before: Ian W. Craig, *Chairman* and
William H. Preston, *Commissioner*

Dated the 23rd Day of May, 1990

ORDER

The application of Porter Trucking Ltd. (the applicant), published as No. 2238/89, came before the Motor Carrier Commission in Burnaby, B.C. on April 23, 1990 for public hearing. The hearing was completed on April 26, 1990.

The applicant was represented by Counsel, Mr. P. Sabatino. The two objectors, Clark Reefer Lines Ltd. (Clark) and CP Express & Transport Ltd. (CPET), were represented respectively by Counsel, Mr. R.W. Macdonald and a company executive, Mr. Bruce Smith.

Mr. Sabatino, in presenting the case for the applicant, first amended the application by adding to the commodity, general freight, a restriction reading "excluding new and used automobiles and trucks." He then called a total of twenty-one witnesses, nineteen of them shippers, and two of them company executives. In addition a number of exhibits were filed, among them a book of corporate information and a book containing support material.

The contents of the Corporate Exhibit (No. 4) was reviewed generally by Mr. Lloyd Pawson, the B.C. Regional Manager for the applicant company and subsequently in less detail by Mr. J. Murphy, the applicant's General Sales Manager. Exhibit No. 4 included a brief history of the applicant company which commenced business in 1963 under

the name of P.L. Porter Trucking Ltd., but through a number of acquisitions developed into a significant western regional carrier. In addition, details were included in that Exhibit with respect to the licence authorities held, terminals, equipment, proposed service schedules, and projections of revenue and expenses through 1994. Copies of newspaper clippings, reports and projections on the future growth and importance of Kelowna, and the Okanagan area generally were also included therein.

The book of support material contained copies of 130 certificates of support as well as a summary prepared by the applicant of estimates regarding volumes of freight that would be available to them.

The shipper witnesses, most of whom presently use the services of the applicant to and from points outside the Province of B.C., generally testified to their satisfaction with the services of the applicant and indicated that they would be prepared to use them to the areas applied for if the application were granted. They each generally predicted further growth in their volumes of freight over the years to come, which would also be tendered to the applicant provided that the rates are satisfactory.

Mr. Pawson, after reviewing his experience in trucking and giving details with respect to the service proposed to be offered to the Okanagan Area by the applicant, spoke of the volumes of freight anticipated to and from the Okanagan. He also testified regarding the projections in Tab 11 of Exhibit 4, of 51 million pounds for the first year of service to and from the Okanagan area generally, which projections, together with a 96% operating ratio for the year 1990 were, he felt, realistic.

Mr. Murphy, in his testimony, also reviewed the service plans of the applicant company and their proposed triangulation system of operation, and indicated that it is essential to blend and co-ordinate the applicant's existing extra-provincial authority together with the present application for intra-provincial authority. He noted that the rates charged are compensatory and he accepted responsibility for preparing the proposed tariff, which he worked out in comparison with those filed by three other major carriers. He felt that the applicant's rates would be competitive with those of the objectors. He noted also that one pup load of freight a day would make the Okanagan service viable, but he was confident that more freight would be tendered to his firm. He testified as well that the application under consideration is vital to Porter Trucking.

Mr. Murphy also thoroughly discussed the situation with respect to his company's terminal facilities, both owned and leased. He noted that the terminal in Coquitlam, out of which they operate at the present time, is leased, has two years to go and is barely adequate, but that they are presently looking for alternative sites for a new terminal.

The two objectors, in presenting their case in opposition, called two witnesses and also filed a number of exhibits.

Mr. Smith, speaking for CPET, reviewed the licence authority held by his firm, the service provided to the areas applied for, the terminal facilities operated, and the volumes of freight transported. He pointed out as well that the vast majority of shipments arrive at their Okanagan destinations overnight and on time. He pleaded the cause of scheduled Class I carriers generally and suggested that many unscheduled carriers leave the smaller parcels and smaller centres of population to the Class I scheduled carriers to service.

Mr. Macdonald called one witness in the person of Mr. H.J. Vleeming, General Manager of Clark, who testified regarding the history of Clark and the service presently provided to the Okanagan. He also responded to the testimony of several witnesses called by the applicant who had general complaints regarding service to that area. He discussed the terminals operated by his firm, and noted the diminishing freight volumes destined to Okanagan points, which had been reduced significantly over a two year period as indicated in Exhibit No. 12 filed by Mr. Macdonald.

In closing, Mr. Vleeming indicated that the granting of the application under consideration and/or the granting of an application filed by Byers Transport Ltd., which went to hearing and on which a decision had not yet been rendered by the Commission at the time of this hearing, would result in his firm closing two terminals, one in Vernon and one in Penticton. This would result in service in the surrounding areas possibly being reduced or delayed to some extent. This statement regarding the possible closure of terminal facilities was subsequently confirmed by the witness under cross-examination.

In his summation, Mr. Smith, on behalf of CPET, argued that the volumes of freight shown by the applicant in a summary, which is part of Exhibit No. 2, were widely exaggerated. He then reviewed the evidence of several of the shipper witnesses and pointed out what he felt was an error factor, which if applied to the totals in the summary, made a net difference of 43% in the suggested volumes that would be available to the applicant. In one case in particular, he noted the volumes of freight estimated at 100,000 pounds weekly by the shipper Molson Breweries Ltd., which movement is actually under contract to another carrier until the end of 1991 and is therefore not available to the applicant. He suggested in closing that no case had been made by the applicant and the application should therefore be refused.

Mr. Macdonald, in his summation, noted that the application was intra-provincial in nature and must be judged on the basis of the public interest of British Columbia. Both objectors have a substantial investment in this province, both in terminals, facilities, and equipment, while the applicant owns terminals in areas were they do less business, but none in B.C. were they do more business. He cited Exhibit No. 2 (the summary of freight available) as being a distortion of evidence and went on to point out various discrepancies between the summary and the testimony of the witnesses who appeared at the hearing.

Mr. Macdonald noted that there had not been one solid complaint about the service provided by either Van-Kam or Clark and suggested that the Commission carefully read the

contents of Exhibit No. 11, which are letters of commendation from a number of Clark's seventeen hundred customers. The Commission, he argued, must consider the public of B.C. and in doing so refuse the application.

Mr. Sabatino on behalf of the applicant, argued, in his summation, that the public the Commission must be concerned about include the shippers who wish to use the service of the applicant. He also made reference to the triangulation type of service provided by the applicant, which has been successful and which would permit his client to provide a better service to customers in the Okanagan. He also reviewed the evidence of a number of the witnesses who testified at the hearing.

Mr. Sabatino argued that at no time did the applicant indicate that they would expect to be tendered all of the freight projected in the summary section of Exhibit No. 2. One pup a day would be sufficient to enable the applicant to commence service to the Okanagan. This is not a short term proposal for the applicant, who is instead looking to the long haul.

As for terminals, Porter Trucking is a trucking firm not a real estate firm. They had property in B.C. at one time, a section of which was expropriated to make way for a highway that rendered the property unsuitable for a terminal. Two years remain on the present lease facility and the applicant is already looking for an alternative, larger terminal site which will either be purchased or leased.

In closing Mr. Sabatino pointed to the extensive population growth experienced in the Okanagan area, which is such that it can stand the additional services applied for. Both Van-Kam Freightways (not represented at these proceedings) and Clark are quality carriers, but there is room in the Okanagan for one additional quality carrier. The applicant, he noted, has been servicing this province for over twenty-seven years, is now seeking additional licence authority, and the application should be granted so that a better service can be provided to the public.

The Commission, after carefully reviewing all of the evidence before it, including a re-examination of all the support material and testimony presented at the hearing, the argument and comments of the applicant and objectors, makes the following findings of fact:

1. There was no compelling evidence presented at the hearing that there was a lack of service, inadequate service, or a need for additional service to the areas attached to the application;
2. The support material filed was generally lacking in detail with respect to volumes and frequency of service required;
3. The testimony of the witnesses presented by the applicant was not convincing, and gave no indication of any difficulty in obtaining alternative service.

In arriving at its decision in this matter, the Commission took into account not only the findings recited above, but also the recent granting of an application by Byers Transport Ltd. to provide service to both the Kootenays and the Okanagan area. The Commission is not convinced that additional service is justified at this time along the lines proposed by the applicant.

ACCORDINGLY, THE MOTOR CARRIER COMMISSION ORDERS THAT the application of Porter Trucking Ltd., published as No. 2238/89, be and it is hereby **refused.**

IT IS ORDERED FURTHER THAT the applicant and the qualified objectors named herein be and they are each assessed costs in the amounts of the security deposits filed by them beforehand.

BY THE MOTOR CARRIER COMMISSION:

John Kosowick,
Secretary to the Commission

APPROVED BY:

Ian W. Craig,
Chairman

William H. Preston,
Commissioner

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of Application of Jaycox Industries Ltd., Published as No. 561/90.

Before: W.H. Preston, *Chairman*
and Ian W. Craig, *Commissioner*

Dated the 24th Day of July, 1990

ORDER

The application of Jaycox Industries Ltd. (the applicant), published as No. 561/90, came before the Motor Carrier Commission on July 16, 1990 for public hearing.

The applicant, an expediter for the mining industry industry, which operates out of Smithers, B.C., was seeking through this application to licence two vehicles to provide road transportation service for that industry to and from what is referred to as the "golden triangle" section of Northwestern B.C.

The applicant was represented by Counsel, Mr. R.W. Macdonald. The eight qualified objectors were represented as follows: Bandstra Transportation Systems Ltd. by a company official Mr. J. Bandstra; Lindsay's Cartage & Storage (1973) Ltd. by a company official Mr. E. Oystenson; Cornell Travel Centre Ltd. by Ms. D. Cornell; and Seaport Limousine Ltd., David Peter Neuman, the Stewart-Hyder Chamber of Commerce, Vancouver Island Helicopters, and Limar Industries

Ltd. all by Mr. D.P. Neuman.

In presenting the case for the applicant Mr. Macdonald called a total of six witnesses, five of them representatives of substantial mining interests involved in exploration, drilling, consulting or preparation work in the "golden triangle" area and one corporate witness, that being the president of the applicant company, Mr. S. Jaycox. In addition, a number of exhibits, as well as letters of support were filed.

The representatives of the mining industry witnesses generally stated their need for reliable expediting service which is provided by Jaycox Industries Ltd. at the present time and supported that firm's application for motor carrier licence authority, which in their view, if granted, would enable the applicant to provide a more flexible, responsive service not restricted to the scheduled type of service provided by the objecting carriers. Letters of support filed strongly supported the application as did the witnesses in their testimony.

Mr. Jaycox, in his testimony, outlined the type of service provided to the mining industry, which included not only delivery to the various camps of fuel, tools, equipment, lumber, and temporary shelters, in fact all of the necessities of life, but also making travel arrangements and forwarding radio messages. Any goods or services are required to be delivered in a timely fashion and often must be coordinated with the arrival and/or departure of officials or workers to the various camps at which work is progressing, or other events such as poor weather conditions.

Mr. Jaycox described the system under which needed supplies are trucked to staging locations such as Bell II or in other cases to airports from whence they are flown to the remote mining camps, most of which are involved in the exploration for mines and are not accessible except by air, usually helicopter.

At the present time the road transportation portion is accomplished through the use by the applicant of licensed carriers, or by using vehicles leased or owned by the mining companies and drivers provided and paid by the applicant. Mr. Jaycox indicated that in some cases, particularly when some degree of haste is required and smaller shipments are involved he could not wait for the scheduled service provided by some of the objectors and if the applicant were licensed a faster service, including transportation could be provided.

In her testimony, Ms. D. Cornell, one of the objectors, complained that since Jaycox became involved as an expediter she had lost the business of some of the mining companies, but could not give any details as to amounts of business lost, nor recall the names of the mining companies involved. She agreed at the same time that because of increased activity in the area, her business had been growing in volume.

Messrs. Neuman, E. Oystenson and J. Bandstra, in their evidence, generally suggested that there was no need for a licence to be issued to the applicant as he was already providing a service praised by his supporters as being excellent. They testified as well that while they operated primarily on a scheduled service they could be flexible and had available a charter service that could be provided on request. It was suggested as well by Mr. Neuman that service to the various sites involved could be made from Stewart, B.C., rather than from Smithers, B.C. where the applicant is located.

In his summation Mr. D.P. Neuman expressed the view that the applicant had merely filed a wish list and had submitted no proof of public need. He suggested that there was ample service, both L.T.L. and charter and for these reasons the application should be refused.

Mr. Oystenson also argued that no public need had been demonstrated. Even the shipper witnesses had indicated that the service presently provided is excellent so there was no need to grant the authority sought. Expediters, Mr. Oystenson asserted, should provide their own specialized service, but truckers should provide the transportation services.

Mr. Bandstra argued that his firm provided a good service as do the other objectors present. He went on to say that the granting of the application could be detrimental to the existing service, and could severely hurt licensed carriers, particularly in the winter.

Mr. Macdonald in his summary argued that the applicant is a substantial and successful expediter that provides a vital and crucial link between the mining industry and the trucking industry. He noted that the corporate witness Mr. Jaycox had been forthright and open in his testimony, and had even complimented Mr. Bandstra on his service and assured him that if licensed the applicant would continue to make substantial use of those services.

Mr. Macdonald went on to argue that it was logical for the applicant to be located in the Smithers area where most of the supplies required by the mining industry can be procured. He argued further that the Commission should not penalize a vital and live industry just to satisfy the desires of a group of boosters from Stewart, B.C., who wanted most of the business to go to that area.

In closing he pointed out that this was a very busy season for the mining industry, but even so five responsible shippers from major companies had appeared as witnesses in support of the applicant who seeks to provide a custom. expedited service to the mining industry of the province. He asked that the application be granted.

The Commission is fully cognizant of the importance of the mining industry to the economy of British of Columbia as well as its needs for reliable and readily available road transportation services. The Commission notes the very short span of suitable weather conditions for drilling, surveying and preparation work in the mountains located in the "golden triangle". The Commission is also fully aware of the excellent road transportation services provided by the licensed carriers present at the hearing of the application under consideration.

The Commission noted, however, that those carriers, with perhaps one exception, are doing reasonably well and have been expanding their fleets and services over the recent years. Furthermore, although some concern was expressed, no firm evidence or testimony was provided to indicate that the

granting of the application would cause the presently licensed carriers to curtail their service to the public or to completely cut any of the services now being provided.

The needs of the shippers must be met and the Commission has concluded that a reasonably good case has been made by the applicant. It has decided therefore that the application is to be granted but restricted so that the service can be provided not to the general public at large, but only to those firms which have beforehand entered into a contractual arrangement with the applicant for expediting services. Furthermore, the applicant is to be restricted to the use of one vehicle only at this time, limited in G.V.W., so as to lessen to some extent any detrimental effects on existing licensed carriers. The one vehicle licensed will enable the applicant to provide an immediate service of a hot shot type when required.

THE MOTOR CARRIER COMMISSION ORDERS THEREFORE THAT the application of Jaycox Industries Ltd., published as No. 561/90, be and it is hereby granted in the following wording:

Mining, exploration equipment and miningcamp supplies, including, but not restricted to, food products, building materials and fuel supplies.	For any individual or company	From the Smithers, B.C. area, including but not limited to Smithers Airport, Telkwa and Tyee Lake delivered to Stewart, B.C. or Dease Lake, B.C. and points along Highway 37 and 37A, including any roads or trails leading from the aforementioned ghways to access any mining roperty, mining camp or staging area; or vice versa.

Restrictions:

1. Restricted to the services of one vehicle only not to exceed 5000 kg GVW.
2. Service to the Terrace, Kitimat or Prince Rupert areas is prohibited.
3. No service to be provided to individuals or companies other than those to whom the licensee is under contract for expediting services.

The applicant should be aware that the licence granted herein is inter-provincial and does not authorize the crossing of any borders of this province.

IT IS ORDERED THAT the applicant and the objectors be and they are each assessed costs in the amount of the security deposits filed by them beforehand.

BY THE MOTOR CARRIER COMMISSION:

John Kosowick,
Secretary to the Commission

APPROVED BY:

W.H. Preston,
Chairman

John Kosowick for Ian W. Craig,
Commissioner
Who agreed to this decision beforehand.

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of Application No. 646/90
of Douglas Delivery Ltd.

Before: William H. Preston, *Chairman*
and John Kosowick, *Commissioner*

Dated the 4th Day of September, 1990
(Under Delegated Authority)

ORDER

The application of Douglas Delivery Ltd. (the applicant), published as No. 646/90, came before the Motor Carrier Commission on August 27, 1990, for hearing.

The application was for authority to haul general freight on a charter trip basis from points in Licence Districts 14, 14A and 15 (the Lower Mainland) to points on Vancouver Island, or vice versa.

The applicant was represented by Mr. L.R. Peterson, Q.C. The three qualified objectors: Dan Foss Industries Ltd., Sidney Freight Ltd. and CP Express & Transport Ltd. were represented respectively by company officials Mr. F. Mortensen, Mr. B. Marshall and Mr. B. Smith.

Mr. Peterson began his case with a brief history of the applicant company, which is owned and operated by Mr. T. Cridland. The company has over 2,000 active customers and grossed $3 to $4 million in the past year. Its offices and plant are in Port Coquitlam, where the staff includes three dispatchers and two full time heavy-duty mechanics. The applicant operates 97 vehicles, some of which are owned by owner/operators and others by a related company.

Mr. Peterson informed the Commission that the applicant currently holds licence authority for LTL general freight delivered between points on the Lower Mainland and Fraser Valley and charter trip authority point to point within a radius of 100 miles of the main Post Office in Vancouver, with some exclusions. The applicant also has authority to provide service to seven named shippers under contract, and extra-provincial authority for service from any border of B.C. to any point in

B.C., including Vancouver Island, or vice versa, but is restricted to not more than 3 shippers at any one time.

Mr. Peterson then called six shipper witnesses, who generally spoke of the high standard of service they currently receive from the applicant in the Vancouver area, the difficulties encountered with current service to the Island, and their belief that Vancouver Island service would be vastly improved if the applicant was granted the authority it is seeking.

Mr. T. Cridland, president of the applicant company, testified that his company is growing, that it grossed $4 million dollars last year and he expects a 20% increase this year. Mr. Cridland also stated that 70% of his customers ship to the Island, and are supporting this application. He added that shippers demand service right away which the applicant provides, and that's why they keep their customers.

In cross-examination, Mr. Cridland stated that the company has no driver employees, but independent contractors who are paid commission for labour only, and the applicant assumes responsibility for running costs and damage to vehicles. He explained that many of the support certificates mention LTL shipments because the applicant had originally intended to apply for LTL general freight but decided to change the application to truck load lots, which it was felt might be more acceptable to the Commission.

The objectors generally stated that the Lower Mainland/ Vancouver Island lane of traffic is expensive to operate, partly because there are extra costs involved for ferries, etc., but largely because of the lack of back hauls, and extra carriers would only further compound the existing situation. One of the objectors noted that he had applied for authority to serve parts of Vancouver Island in January, but was denied authority because there appeared to be adequate service by scheduled and unscheduled carriers, and he believes that the situation has not drastically changed since then. The objectors suggested the shipper witnesses supported the applicant for competitive reasons rather than the fact that existing carriers are not providing an adequate service, and they urged the Commission to deny the application.

Mr. Mortensen, in his summation, reiterated his view that Vancouver Island is generally adequately serviced at the present time and the situation has not changed materially over the last eight months, when his application for authority was refused. Mr. Marshall noted that his company maintains five terminals on the Island and is very concerned with the number of applications being filed to provide service to the points his company services. The imbalance of freight was also a problem with 70 to 75% of their units being returned to Vancouver empty. Mr. Smith reviewed the testimony of the six shipper witnesses and suggested that one at least was satisfied with the service, and the others have no problem with the present service or desire service that it is not possible to provide. He closed his argument by stressing also the imbalance of freight to and from Vancouver Island and suggested that the granting of the application would only compound the existing problems.

Mr. Peterson, in his final summation, suggested that there was no evidence of any compounding effect, and that there was strong support for the application. He also pointed out that one shipper witness was hauling his own goods because he could not get good service from public carriers. More competition is needed, he felt, and not less, and the evidence presented points out the demand for service to the shipping public. He suggested that the Commission carefully look at the support material filed and the viva voce evidence of the shipper witnesses. A need for the service applied for was clearly demonstrated at the hearing, he suggested, and in closing asked that the application be granted as there was no evidence that the granting would put any of the objectors out of business.

The Commission is not satisfied on the basis of the testimony and evidence, exhibits and summations presented at the hearing that a public need has been demonstrated for the service proposed to be offered by the applicant on what appears at this time to be a fragile lane of traffic. The Commission has concluded therefore that the granting of the application would not be in the public interest.

ACCORDINGLY, IT IS ORDERED THAT the application of Douglas Delivery Ltd., published as No. 646/90, be and it is hereby **refused**.

IT IS FURTHER ORDERED THAT the applicant and the objectors who participated in the hearing be and they are each assessed costs in the amount of the security deposits filed by them beforehand.

BY THE MOTOR CARRIER COMMISSION:

Valerie Isaac,
Acting Secretary

APPROVED BY:

William H. Preston,
Chairman

John Kosowick,
Commissioner (under delegated authority)

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of Application No. 669/90
of Ican Transport Ltd.

Before: Ian W. Craig, *Commissioner*,
and John Kosowick, *Commissioner*,
(under Delegated Authority)

Dated the 27th Day of September, 1990.

ORDER

The application of Ican Transport Ltd. (the applicant), published as No. 669/90, came before the Motor Carrier Commission for hearing on September 10, 1990, in Campbell River, B.C.

The applicant is seeking two new Class III Public Freight-vehicle certificates to haul fresh and frozen food products, fish produce, dairy products, groceries (dry), clams and oysters for any individual or company from points in Licence Districts 14, 14A and 15 (the Lower Mainland) and Nanaimo, delivered to Campbell River and points on Vancouver Island north of Campbell River, and to Quadra Island; and vice versa. Service would be restricted to a vehicle with a maximum gross vehicle weight of 14,850 kg.

The applicant was represented by Mr. G. Culbert, secretary of the applicant company. The objector, Valley Reefer Services Ltd., was represented by Counsel, Mr. R.W. Macdonald.

Mr. Culbert called four shipper witnesses and two corporate witnesses, including himself.

The shipper witnesses all stated they received excellent service from Ican, who will pick up freight late at night and if necessary, store it in a refrigerated warehouse (owned by SPS Distributors & Cold Storage Ltd., whose principal is Mr. Culbert), before shipping it next day. One witness told the Commission there is no reefer service to Quadra Island, but Ican provides service two or three times a week, and SPS will store his frozen goods between trips if required. Generally these witnesses testified that in their experience the other licensed carriers are not interested in hauling small loads but Ican will accept them and has offered a complete service for refrigerated and dry goods if its application for licence authority is approved.

In his testimony, Mr. Culbert said the application is designed to serve small clients and those in outlying areas such as Port McNeill, Quadra Island and northern Vancouver Island. He stated it is not the applicant's intention to be in competition with the major trucking companies, but to serve the customers with small shipments. He explained that SPS Distributors had nothing but problems with the drivers it originally hired and that the basic concept of Ican was to provide a trucking service for SPS. However, there are numerous other businesses in the community with small loads of freight to haul. In his opinion the major companies are not interested in small volumes and the applicant wants to fill that need.

Mr. Culbert told the Commission that the northern end of the Island cannot be served from Vancouver in a day but the applicant can provide this service from Campbell River. The applicant has one 3-ton and one 5-ton refrigerated truck, and the use of SPS Distributors' federally inspected warehouse, cold room and forklifts. The applicant originally filed its application six months' ago because it wants to be legitimate and was surprised when an objection was filed because it is not its intention to be a large trucker in competition with the truckers already on the Island.

Mr. B. Thulin, president of the applicant company, then testified that he had started the trucking business for SPS Distributors in April, 1989, with one truck. He is in Vancouver twice a week and was asked if he could pick up small loads while he was there. The main thrust of his application is from Nanaimo to northern Vancouver Island, but he would also like to provide an overnight service to Vancouver. He stated he does no advertising or soliciting but shippers hear of him by word of mouth and he has had to turn business away. He provides a timely service which is important because of the nature of the goods he hauls.

In cross examination, Mr. Thulen stated he has had a written contract with SPS Distributors since April, 1989, but no motor carrier licence, and from that date he has occasionally hauled illegally from Victoria and Vancouver. He agreed that his main supplier was SPS and the other support letters were from prospective shippers.

Mr. P. Feijao, president of Valley Reefer Lines Ltd., the sole objector, then took the stand. He explained that daily a reefer from Vancouver and another from Victoria meet at Nanaimo and one then continues up Island. On average they make 75 to 85 deliveries five days a week with lesser volumes on Saturdays. 500 lbs. a week goes to Campbell River. In his opinion it is not feasible to provide LTL service north of Campbell River unless Vancouver is included and he does not oppose LTL north of Campbell River, or a contract service from the Lower Mainland to the Island, or vice versa, but he does oppose the Vancouver/Nanaimo part of the application. He added he believes it is not right to operate and then apply for a licence.

Under cross-examination, Mr. Feijao said his company has no storage facility in Campbell River and no pick-up on Sundays. He admitted people may not be aware of his company's service as he does not advertise locally.

In his closing argument, Mr. Macdonald said the motor carrier business was a regulated industry and Ican should not be rewarded with a licence after illegally hauling for over a year. He stated the application was a mix of a shipper's and carrier's interest but if it was restricted to a contract haul for SPS Distributors the objector would not oppose the granting of a licence. He reminded the Commission its duty is to regulate for sound economic conditions, and none of the larger shippers would deny service to the public if the volume warrants it, but there is no evidence that such a broad authority is warranted. He stated there was no evidence of lack of service or inadequate service between Vancouver or Victoria and Island points, but an LTL reefer service north of Campbell River may be justified. Mr. Macdonald closed by saying that the applicant has not complied with the Motor Carrier Act but has clearly ignored it and must not be granted a licence on the basis of continued illegal operations.

Mr. Culbert, in his closing statement for the applicant, said that SPS had previously dealt with a licensed carrier and the applicant was not trying to avoid the need for authority. Indeed it had turned away a large volume of business while waiting for this application to be heard. He stated that the market decides the need and the applicant had given very good service to a large number of small shippers, who otherwise might not get service. He told the Commission their rates are published, that it was not their intention to avoid authority and the applicant would like to continue to serve its customers.

Commissioner Craig informed the hearing that he was disturbed about the illegal operations of the applicant, and then instructed Ican Transport Ltd. to **cease and desist** from providing transportation services other than to SPS Distributors Ltd. with which the applicant has a contract (and is corporately related). He added that temporary operating permits would be granted to the applicant, on request, for services to SPS Distributors Ltd. for Vancouver/Nanaimo/Campbell River and points north.

After considering all of the information before it, including the testimony and exhibits provided at the hearing, the Commission has concluded that a case has been made for the granting of some motor carrier licence authority, but certainly not in the terms of the application.

ACCORDINGLY, IT IS ORDERED THAT the application of Ican Transport Ltd., published as No. 669/90, be and it is hereby **refused** as filed.

IT IS FURTHER ORDERED THAT the said applicant be and it is hereby granted two new Class III public freight-vehicle certificates to operate in the following terms :

Commodities to be carried:	**For whom to be carried:**	**Area, route or territory:**
Foodstuffs requiring refrigeration	SPS Distributors and Cold Storage Ltd.	From points in Licence Districts 14, 14A and 15 delivered to Nanaimo and Campbell River, B.C.: or vice versa;
Foodstuffs requiring refrigeration.	For any individual or company	From Campbell River, B.C., delivered to points north, but not limited to Quadra and other islands: or vice versa.

Restrictions Re Clauses 1 and 2:

1. All vehicles providing a service under these clauses must beable to maintain variable temperature control between -30 and +30 degrees celsius.
2. Service under this authority is restricted to vehicles with a maximum gross vehicle weight of 14,850 kg.

In view of the applicant's admitted propensity to disregard the requirements of the Motor Carrier Act, the applicant is cautioned that its operations will be monitored for a period of one year and any further violations harshly dealt with.

IT IS FURTHER ORDERED THAT the applicant and the objector are each assessed costs in the amount of the security deposit filed by them beforehand.

BY THE MOTOR CARRIER COMMISSION:

Valerie Isaac
Acting Secretary

APPROVED BY:

Ian W. Craig,
Commissioner

John Kosowick
Commissioner (under delegated authority)

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of the *Motor Vehicle Transport Act.*,
S.C. 1987, Chapter 35;

And in the Matter of a Show Cause Hearing
pursuant to Section 9 of the *Motor Carrier Act;*

And in the Matter of West Coast Freightlines Ltd.,
Edmonton, Alberta, the Respondent.

Before: William H. Preston, *Chairman,*
Ian W. Craig, *Commissioner,*
and William M. Gartside, *Commissioner.*

Dated the 17th Day of October, 1990.

ORDER

WHEREAS West Coast Freightlines Ltd. (the Respondent) has been required by the Motor Carrier Commission to appear before it on Wednesday, January 9, 1991, to SHOW CAUSE why all the licences to and in its name should not be cancelled; and

WHEREAS the Show Cause hearing is being convened because it is alleged that the Respondent failed to comply with the requirements of Regulation 6.33 of the Motor Carrier Act to maintain its licensed vehicles in a safe operating conditions; and

WHEREAS the Superintendent of Motor Vehicles, in his capacity as Director for purposes of the "Extra-Provincial Truck Undertaking Licensing Regulations" appended to the

Motor Vehicle Transport Act, 1987 (Canada), has cancelled British Columbia Safety Certificate No. 200-029-771 issued to West Coast Freightlines Ltd.; and

WHEREAS in the interest of safety on the highways of this Province the Commission deems it to be prudent to suspend the Respondent's licence authorities until such time as the results of the Show Cause hearing scheduled for January 9, 1991, have been determined;

THE MOTOR CARRIER COMMISSION ORDERS, THEREFORE, THAT all of the motor carrier licence authority issued to and in the name of West Coast Freightlines Ltd. be and it is hereby suspended until further notice.

BY THE MOTOR CARRIER COMMISSION:

John Kosowick,
Secretary to the Commission

APPROVED BY:

William H. Preston,
Chairman

Ian W. Craig,
Commissioner

William M. Gartside,
Commissioner

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of the Application of
Husky Transport Ltd., Published as No. 1715/90.

Before: W.H. Preston, *Chairman*

Dated the 8th day of February, 1991.

ORDER

The application of Husky Transport Ltd., (the applicant), published as No. 1751/90, came before the Motor Carrier Commission in Fort St. John, B.C. on January 15, 1991, for public hearing.

The applicant was represented by Counsel, Mr. Brian A. Daley. No objectors appeared and none were represented at the hearing.

The applicant, which presently holds thirty Class 3 public freight vehicle certificates, was seeking through this application to add to their existing Conditions of License, a new clause authorizing the transportation of bulk cement on a charter trip basis for any one individual or company between points situated within Licence District No. 21.

The principals of the applicant company, the president Mr. D. Okrainec and his brother, C. Okrainec, the secretary-treasurer, indicated in their testimony that their family-owned firm had been in business for approximately thirty years. It offers specialized services to the oil field industry in the area, often on very short notice, particularly with bulk cement. The failure to provide a prompt service in this case may result in very expensive procedures being required to maintain the serviceability of a drill hole.

The two brothers testified that they had provided service for a period of time under Temporary Operating Permits, but it often was not possible to get permits on short notice and this had caused one of their customers to turn to Alberta-based carriers for service. The applicant company, which has grown in size over the last twenty-five years in this area, is experiencing an upswing in demand at this time and wishes to be able to promptly serve all of its customer's needs for transportation.

Further testimony was heard that a preventative maintenance program is in effect and is operated under the supervision of one of the two principals of the company who is a licensed heavy duty mechanic. The company safety record, according to the testimony, has been above average over the past fifteen years.

In considering all of the information before it, and noting the absence of any objectors, the Commission, in an oral decision from the Bench, advised those present that the application under consideration would be granted by written Order in due course.

The Motor Carrier Commission confirms that oral decision dated January 15, 1991 and hereby ORDERS THAT the application of Husky Transport Ltd., published as No. 1751/90, be and it is hereby granted in whole.

IT IS FURTHER ORDERED THAT the applicant be and it is hereby assessed costs in the amount of the security deposit filed by it beforehand.

BY THE MOTOR CARRIER COMMISSION:

John Kosowick,
Hearing Officer

APPROVED BY:

W.H. Preston,
Chairman

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of a Review by the Motor Carrier Commission of its decision concerning the Application of Silver Fox Coach Lines Ltd.,
Published as No. 1635/90

Before: Ian W. Craig, *Commissioner*
and William M. Gartside, *Commissioner*

Dated the 24th day of January, 1991

ORDER

The application of Silver Fox Coach Lines Ltd. (the applicant), published as No. 1635/90, which was originally refused, came before the Motor Carrier Commission on January 15, 1991 for review.

The applicant is requesting an alteration of license authority to permit the charter trip transportation of a person or a group of people from Vancouver and points situated within a distance of forty-five (45) road miles from its boundaries, and the District of Chilliwack and Vancouver Island excluding the area north of Horseshoe Bay, the Sechelt Peninsula, and the Gulf Islands, to any point in B.C. and return with the same person or group of people of arranged for on the same charter.

The applicant was represented by Mr. Paul Sabatino, Barrister & Solicitor, who called upon Mr. James C. Bower, the sole officer and shareholder of the applicant company, as well as customer witnesses, Nell MacDonald, Rose M. Green, and David Waterman for evidence and submissions.

The objectors were Greyhound Lines of Canada., represented by Mr. Robert Parke, vice-president; Vancouver Tours & Transit Ltd., represented by Mr. Lew Aldrich, dispatcher; and Black Velvet Tours Ltd., represented by Mr. John MacDonald, president.

Counsel for the applicant asked that the application be revised for the origination of Vancouver and forty-five (45) road miles to any point in B.C. and vice versa on the same charter. Mr. Sabatino then submitted an exhibit containing documents relative to the application and the revision. In addition to the oral evidence and submissions there were documents titled "Silver Fox Coach Lines Ltd. Financial Statements" and "Hi-Way Holidays Inc. Financial Statements" submitted to the Commission.

The representatives of the objecting companies cross-examined the witnesses and made submissions pointing out to the Commission that there was no evidence of public need and necessity.

Counsel for the applicant argued that the summer demand for coaches, the support of licensed carriers, the need for first class services, the unique services offered for the special needs, and the requirement of transportation packages supported the application and urged the Commission to approve the application as revised.

After considering all of the information before it, including the applicant's request to revise the application to reduce its scope, and the additional information provided at the review, the Commission has concluded that its original decision should be varied in favour of the applicant.

ACCORDINGLY, THE MOTOR CARRIER COMMISSION ORDERS THAT its previous decision refusing Application No. 1635/90 of Silver Fox Coach Lines Inc. be and it is hereby rescinded and the said application be granted in part by adding an additional clause to the present license authority to read as follows:

> As a limited passenger vehicle, Charter Trips for Hi-Way Holidays Inc. or Red Velvet Tours & Travel Ltd. only, transporting a person or a group of people under charter from points within that portion of License Districts Nos. 14, 14A, and 15 that are within forty five (45) road miles of the boundaries of the City of Vancouver to any point in British Columbia; and return with the same person or group of people if arranged for on the same charter.
>
> **Restriction:** All service provided under this clause shall be under charter to either Hi-Way Holidays Inc. or Red Velvet Tours & Travel Ltd. and the authority shall only remain valid and in effect while James C. Bower is the sole shareholder in Silver Fox Coach Lines Ltd. and Hi-Way Holidays Inc. and James C. Bower and Patricia Bower are the sole shareholders in Red Velvet Tours & Travel Ltd.

The Commission extends its appreciation to Counsel and the representatives of the various carriers who presented their views and also to the witnesses who came forward and gave of their time.

BY THE MOTOR CARRIER COMMISSION:

M. Rowden,
Hearing Officer

APPROVED BY:

Ian W. Craig,
Commissioner

William M. Gartside,
Commissioner

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PROVINCE OF BRITISH COLUMBIA
MOTOR CARRIER COMMISSION

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In the Matter of the
Motor Carrier Act R.S.B.C. 1979, Chapter 286,
and Amendments Thereto and Regulations Thereunder;

And in the Matter of Sardis Taxi Ltd.,
Application No. 1293/90

Before: Ian W. Craig, *Commissioner*
and William H. Gartside, *Commissioner*

Dated the 21st day of November, 1990

ORDER

The application of Sardis Taxi Ltd. (the applicant) came before the Motor Carrier Commission on November 8, 1990 for hearing.

The application was to provide a Limited Passenger Vehicle (taxicab) service to originate in the Chilliwack area to points in British Columbia and vice versa.

The applicant was represented by Mr. Michael Thornton, Barrister and Solicitor. The two qualified objectors, Chilliwack Taxi Ltd. and Bob's Taxi Ltd., two corporately related companies operating from a single dispatch system, were represented by Mr. Larry McCrea, Barrister and Solicitor.

Mr. Thornton led evidence of public need, fitness, and the effect on other transportation services by way of affidavits and witness evidence. Mr. Thornton also led evidence of the present intra Chilliwack taxicab service provided by the applicant and the effect of this limitation.

Mr. McCrea led evidence of the present service provided by the objectors and of the effect of the present taxicab service provided by the applicant on the objector companies.

The evidence was clearly led and presented on behalf of the applicant and the objectors by the witnesses and documentation.

Mr. McCrea summarized most of the evidence presented, comparing statements made by the various witnesses. He argued that objectors had the capacity to provide the service to meet demand, and the evidence did not show public need.

Mr. Thornton argued that the evidence of the applicant met the test as outlined in the Motor Carrier Act. He dealt with the present transportation needs, the forceful evidence of the witnesses for the applicant, and the general effect of the proposed service on the existing transportation services. Mr. Thornton reviewed the taxicab service now being provided by the applicant, the disciplined operational control, the problems arising from the limitation of service, and the cry for competition. He remarked on the evidence of the quality and permanence of the applicant's service, of capable management and of the applicant's financial position. He further offered that if the objectors are suffering that it was possibly due to the poor service and not to the additional service provided by the applicant.

The Motor Carrier Commission thanked the Counsel, for the applicant and the objectors, for the clear presentation of their respective evidence, and also thanked those who came forward and gave of their time.

The Motor Carrier Commission considered the evidence placed before the Commission and the arguments put forward by Counsel for the applicant and the objectors and is satisfied beyond a reasonable doubt that there was quality and permanence of service offered by the applicant and there was evidence of fitness, willingness, and ability of the applicant to provide a continuing service. The Motor Carrier Commission also considered the general effect on other transportation services and on the public interest that might be effected by the granting of the application.

ACCORDINGLY, IT IS ORDERED THAT the application of Sardis Taxi Ltd., published as No. 1293/90, be and it is hereby granted in the following form:

The License authorizes the operation of the motor vehicle as a Limited Passenger Vehicle, and in the following manner, only:

Terminal Point: Chilliwack, B.C.

Service that may be rendered: Charter Trips only, for business originating within that portion of License District No. 15 east of the easterly boundary of the District of Abbotsford carrying a person or a group of people under charter to any point in British Columbia, or vice versa, to that portion of License District No. 15 east of the easterly boundary of the District of Abbotsford.

Restriction: Vice versa service is restricted to;
(a) charge customers only, or,
(b) when firm arrangements have been made beforehand.

Restriction: This license is restricted to the operation of vehicles with a maximum carrying capacity of five (5) passengers, exclusive of the driver.

IT IS FURTHER ORDERED THAT the granting of this authority is subject to the filing of a Limited Passenger Charter Trip tariff in the required form at the rates specified in the documentation filed with this application, and also on the payment to the Minister of Finance the vehicle license fees for the remainder of the current license year for six (6) license certificates.

IT IS FURTHER ORDERED THAT the applicant be limited to the operation of a maximum of six (6) license certificates of a period of twelve (12) months from the date of this order and that during this same period the license may not be transferred or assigned.

IT IS FINALLY ORDERED THAT the applicant and the objectors who participated in this hearing be and are each assessed costs in the amount of the security deposits filed by them beforehand.

BY THE MOTOR CARRIER COMMISSION:

Valerie Isaac,
Acting Secretary to the Commission

APPROVED BY:

Ian W. Craig,
Commissioner

William H. Gartside,
Commissioner

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